

Exhibit I - Deposition of
Plaintiffs' police practices
expert, Scott DeFoe

Scott A. DeFoe

Estate of Tashi S. Farmer, et al. v. Las Vegas Metropolitan Police Department

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) ss
3 COUNTY OF CLARK)

4
5 I, Lori-Ann Landers, a duly commissioned
6 Notary Public, Clark County, State of Nevada, do hereby
7 certify:

8
9 That I reported the taking of the deposition
10 of the witness, SCOTT A. DEFOE, at the time and place
11 aforesaid;

12
13 That prior to being examined, the witness
14 was by me duly sworn to testify to the truth, the whole
15 truth, and nothing but the truth;

16
17 That I thereafter transcribed my shorthand
18 notes into typewriting and that the typewritten
19 transcript of said deposition is a complete, true and
20 accurate transcription of my said shorthand notes taken
21 down at said time to the best of my ability.

22
23 I further certify that I am not a relative
24 or employee of an attorney or counsel of any of the
25 parties, nor a relative or employee of any attorney or
counsel involved in said action, nor a person financially
interested in the action; and that transcript review NRCP
30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this 21st
day of August 2018.

LORI-ANN LANDERS, CCR 792, RPR

Scott A. DeFoe

Estate of Tashi S. Farmer, et al. v. Las Vegas Metropolitan Police Department

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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF NEVADA</p> <p>3 ESTATE OF TASHI S.)</p> <p>4 FARMER a/k/a TASHII)</p> <p>5 FARMER a/k/a TASHII) Case No.</p> <p>6 BROWN, by and through) 2:17-cv-01946-JCM-PAL</p> <p>7 its Special Administrator, Elia Del)</p> <p>8 Carmen Solano-Patricio,) VIDEO DEPOSITION OF:</p> <p>9 TAMARA BAYLEE) SCOTT A. DEFOE</p> <p>10 KUUMEALIMAKAMAE FARMER)</p> <p>11 DUARTE, a minor,) Taken on:</p> <p>12 individually and as) Tuesday, August 21, 2018</p> <p>13 Successor-in-Interest,)</p> <p>14 by and through her)</p> <p>15 legal guardian,)</p> <p>16 Stevandra Lk Kuanoni,)</p> <p>17 ELIAS BAY KAIMIPONO)</p> <p>18 DUARTE, a minor,)</p> <p>19 individually and as)</p> <p>20 Successor-in-Interest,)</p> <p>21 by and through his)</p> <p>22 legal guardian,)</p> <p>23 Stevandra Lk Kuanoni,)</p> <p>24 Plaintiffs,)</p> <p>25 vs.)</p> <p>26 LAS VEGAS METROPOLITAN)</p> <p>27 POLICE DEPARTMENT, a)</p> <p>28 political subdivision)</p> <p>29 of the State of Nevada,)</p> <p>30 OFFICER KENNETH LOPERA,)</p> <p>31 individually and in his)</p> <p>32 Official Capacity,)</p> <p>33 SERGEANT TRAVIS)</p> <p>34 CRUMRINE, individually)</p> <p>35 and in his Official)</p> <p>36 Capacity: OFFICER)</p> <p>37 MICHAEL TRAN,)</p> <p>38 individually and in his)</p> <p>39 Official Capacity,)</p> <p>40 OFFICER MICHAEL FLORES,) Reported by:</p> <p>41 individually and in his) Lori-Ann Landers, CCR 792,</p> <p>42 Official Capacity; and) RPR</p>	<p>1 A P P E A R A N C E S:</p> <p>2 For the Plaintiffs:</p> <p>3 FEDERICO C. SAYRE, ESQ.</p> <p>4 Abir Cohen Treyzon Salo, LLP</p> <p>5 1901 Avenue of the Stars, Suite 935</p> <p>6 Los Angeles, California 90067</p> <p>7 Email: fsayre@actslaw.com</p> <p>8 For the Defendants LVMPD, Crumrine, Tran and Flores:</p> <p>9 CRAIG R. ANDERSON, ESQ.</p> <p>10 Marquis Aurbach Cofing</p> <p>11 10001 Park Run Drive</p> <p>12 Las Vegas, Nevada 89145</p> <p>13 Email: canderson@maclaw.com</p> <p>14 For the Defendant Officer Kenneth Lopera:</p> <p>15 DANIEL R. MCNUTT, ESQ.</p> <p>16 MATTHEW C. WOLF, ESQ.</p> <p>17 McNutt Law Firm, P.C.</p> <p>18 625 South Eighth Street</p> <p>19 Las Vegas, Nevada 89101</p> <p>20 Email: drm@mcnuttlawfirm.com</p> <p>21 mcw@mcnuttlawfirm.com</p> <p>22 ALSO PRESENT: JOSEPH CAMP, VIDEOGRAPHER</p> <p>23 RUTH MILLER, ESQ.</p>
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<p>1 DOES 1 through 50,)</p> <p>2 inclusive,)</p> <p>3 Defendants,)</p> <p>4 VIDEO DEPOSITION of SCOTT A. DEFOE</p> <p>5 Taken on Tuesday, August 21, 2018</p> <p>6 At 10:48 a.m.</p> <p>7 At 400 South 7th Street</p> <p>8 Las Vegas, Nevada</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Reported by: Lori-Ann Landers, CCR 792, RPR</p> <p>25 Oasis Job Number 29121</p>	<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 SCOTT DEFOE</p> <p>4 Examination by Mr. McNutt 182</p> <p>5 Examination by Mr. Anderson 215</p> <p>6 Examination by Mr. Sayre 213</p> <p>7 EXHIBIT INDEX</p> <p>8 DEFENDANTS' EXHIBIT DESCRIPTION PAGE</p> <p>9 1 Scott DeFoe's CV, Fee Schedule, 5</p> <p>10 Record of Trial</p> <p>11 Testimony/Depositions, and Report</p> <p>12 2 Plts Initial Disclosures 000005 5</p> <p>13 through 000012</p> <p>14 3 Plts Initial Disclosures 000056 179</p> <p>15 through 000057 and LVMPD 1469</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 PROCEEDINGS</p> <p>2 (Defendants' Exhibit 1, Scott DeFoe's CV, Fee</p> <p>3 Schedule, Record of Trial Testimony/Depositions, and</p> <p>4 Report, was marked for identification as of this date.)</p> <p>5 (Defendants' Exhibit 2, Plts Initial Disclosures</p> <p>6 000005 through 000012, was marked for identification as</p> <p>7 of this date.)</p> <p>8 THE VIDEOGRAPHER: Good morning. Today is</p> <p>9 August 21st, 2018. This begins the videotaped deposition</p> <p>10 of Scott DeFoe. The time is approximately 10:48 a.m. My</p> <p>11 name is Joseph Camp, court videographer of Las Vegas</p> <p>12 Legal Video, and your court reporter is Lori Landers of</p> <p>13 Oasis Reporting Services.</p> <p>14 This is United States District Court, District</p> <p>15 of Nevada, Case No. 2:17-cv-01946-JCM-PAL, titled Estate</p> <p>16 of Tashi S. Farmer, a/k/a Tashii Farmer, a/k/a Tashii</p> <p>17 Brown, by and through its special administrator, Elia Del</p> <p>18 Carmen Solano-Patricio, et al., plaintiffs, versus</p> <p>19 Las Vegas Metropolitan Police Department, a</p> <p>20 political subdivision of the State of Nevada,</p> <p>21 et al., defendants. This deposition is requested</p> <p>22 by the attorneys for the defendants.</p> <p>23 Would counsel present please identify</p> <p>24 yourselves for the record, and the court reporter will</p> <p>25 then administer the oath.</p>	<p>1 Q. Do you have any questions?</p> <p>2 A. I do not.</p> <p>3 Q. Ready to get started?</p> <p>4 A. I am.</p> <p>5 Q. Is trespassing a crime in Nevada?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what the NRS citation for that is?</p> <p>8 A. I do not.</p> <p>9 Q. Is trespassing a crime in California?</p> <p>10 A. Yes.</p> <p>11 Q. Is being under the influence of illegal</p> <p>12 narcotics a crime in Nevada?</p> <p>13 A. It is.</p> <p>14 Q. Is it illegal in California?</p> <p>15 A. It is.</p> <p>16 Q. Is running away from a police officer considered</p> <p>17 reasonable suspicion?</p> <p>18 A. It can be.</p> <p>19 Q. Do you know whether Tashi Farmer initiated</p> <p>20 contact with Officer Lopera or vice versa?</p> <p>21 A. Tashi Farmer initiated a contact.</p> <p>22 Q. Do you have an expert opinion as to what point</p> <p>23 Tashi Farmer was detained by Officer Lopera?</p> <p>24 A. At the time of the initial tasing.</p> <p>25 Q. At no time before?</p>
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<p>1 MR. McNUTT: Dan McNutt and Matt Wolf for</p> <p>2 Officer Ken Lopera.</p> <p>3 MR. ANDERSON: Craig Anderson on behalf of the</p> <p>4 Las Vegas Metropolitan Police Department and Officers</p> <p>5 Crumrine, Tran, and Flores, and with me is a department</p> <p>6 representative, Ruth Miller, assistant legal general</p> <p>7 counsel.</p> <p>8 MR. SAYRE: Federico Sayre for the plaintiffs.</p> <p>9 (Witness sworn.)</p> <p>10 SCOTT DEFOE,</p> <p>11 having been first duly sworn, was examined and</p> <p>12 testified as follows:</p> <p>13 EXAMINATION</p> <p>14 BY MR. McNUTT:</p> <p>15 Q. Mr. DeFoe, my name is Dan McNutt. We met a</p> <p>16 little earlier before we went to court.</p> <p>17 How are you doing this morning?</p> <p>18 A. I'm well, sir. Thank you.</p> <p>19 Q. You've been in quite a few depositions?</p> <p>20 A. I have.</p> <p>21 Q. You know why you're here?</p> <p>22 A. Yes.</p> <p>23 Q. Your attorney's explained the deposition</p> <p>24 process?</p> <p>25 A. Yes, sir.</p>	<p>1 A. No.</p> <p>2 Q. Was there a seizure at any time before the</p> <p>3 initial tasing?</p> <p>4 A. I don't believe so, no.</p> <p>5 Q. If Officer Lopera knew for a fact -- just</p> <p>6 assuming for argument, if Officer Lopera knew for a fact</p> <p>7 that Tashi Farmer was mentally ill and not under the</p> <p>8 influence of illegal narcotics, and he ran into an</p> <p>9 employee-only area at the Venetian, should Officer Lopera</p> <p>10 have pursued him?</p> <p>11 A. Yes.</p> <p>12 Q. Did Officer Lopera know at the time, as you now</p> <p>13 believe, that Mr. Farmer wasn't a threat to anyone?</p> <p>14 A. I don't know what he knew at the time.</p> <p>15 Q. Do you know if Mr. Farmer had been involved in</p> <p>16 any crimes or hurt anyone earlier that evening?</p> <p>17 A. I do not know.</p> <p>18 Q. If Officer Lopera was not resisting, meaning</p> <p>19 active resistance or anything higher on the force -- the</p> <p>20 use of force scale -- do you understand that -- what I</p> <p>21 mean by that?</p> <p>22 A. Were you saying if Mr. Farmer was not resisting?</p> <p>23 Q. Yes. If -- if Mr. Farmer was not resisting, why</p> <p>24 did it take three officers to handcuff him?</p> <p>25 A. I don't know.</p>

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<p>1 Q. Would you find that to be reasonable if he</p> <p>2 wasn't resisting?</p> <p>3 A. It depends. A lot of times with use of force,</p> <p>4 it depends how concerted the effort is. Sometimes it</p> <p>5 takes more than one, and that may be depending on the</p> <p>6 fact that they don't communicate during the use of force</p> <p>7 or the application of force, which could create some</p> <p>8 issues as to getting that person handcuffed.</p> <p>9 Q. When you say, "how concerted the effort," you</p> <p>10 mean the officers acting in concert with each other?</p> <p>11 A. In communicating throughout the use of force, to</p> <p>12 have a systematic approach to the handcuffing technique.</p> <p>13 Q. As opposed to the focused effort of resistance?</p> <p>14 A. Right. Without any --</p> <p>15 Q. Of the suspect?</p> <p>16 A. Without any communication, yes.</p> <p>17 Q. Was Metro wrong for teaching Officer Loper that</p> <p>18 he could use the LVNR as a low-force option?</p> <p>19 A. I think, in hindsight, yes. I believe that it</p> <p>20 should not have been at that level. I believe it's an</p> <p>21 intermediate use of force, and it should have been</p> <p>22 that -- the entire time.</p> <p>23 Q. Are you aware that it has changed since this</p> <p>24 incident?</p> <p>25 A. Effective September 21, 2017, I believe, there</p>	<p>1 A. I think that, as well as police procedures,</p> <p>2 everything from the planning to communication, as I</p> <p>3 mentioned earlier; to the application of force; to the --</p> <p>4 what transpires after the force -- that could be from the</p> <p>5 use of force investigation to the review process and the</p> <p>6 use of force -- any recommendations as it relates to</p> <p>7 issues that may involve ratification, things such as</p> <p>8 that.</p> <p>9 Q. Do you have an opinion as to why Metro</p> <p>10 reclassified the LVNR to intermediate use of force?</p> <p>11 A. I do not know.</p> <p>12 Q. Do you believe that Metro should ban the use of</p> <p>13 all neck restraints?</p> <p>14 A. No. I think neck restraints are an appropriate</p> <p>15 use of force, obviously, if it meets that threshold. I</p> <p>16 think that it's imperative that they train, at least on a</p> <p>17 quarterly basis. It's imperative -- these are perishable</p> <p>18 skills, so for an officer not to be trained, like any</p> <p>19 other less lethal force option or even legal use of force</p> <p>20 option, they shouldn't use that or deploy in the field</p> <p>21 unless they've been properly trained.</p> <p>22 Q. Have you reviewed Metro's training procedures</p> <p>23 for the use of the LVNR?</p> <p>24 A. I have.</p> <p>25 Q. And do you think they are adequate?</p>
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<p>1 was a directive that was generated by Las Vegas</p> <p>2 Metropolitan Police Department, thus advising that it's</p> <p>3 now no longer lower-level use of force.</p> <p>4 Q. And you think it should have been that way since</p> <p>5 the LVNR was adopted by Metro?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Why do you think that?</p> <p>8 A. Because in the course of using an upper body</p> <p>9 control hold or a neck restraint or whatever it may be,</p> <p>10 the person's moving at times. And with that movement can</p> <p>11 create additional application of force. And that</p> <p>12 incident can become prolonged. And with that, it's hard</p> <p>13 at times to determine -- you can't stop that use of force</p> <p>14 at times once you have it applied.</p> <p>15 So unless you've -- once the force becomes</p> <p>16 unreasonable or the force is no longer necessary, I think</p> <p>17 that, in the way I was trained, it's at least an</p> <p>18 intermediate use of force. Many departments, it's a</p> <p>19 lethal use of force, an upper body control hold. I know</p> <p>20 with my former department, Los Angeles Police Department,</p> <p>21 an upper body control hold was parallel with use of a</p> <p>22 firearm.</p> <p>23 Q. Okay. I understand that you're, you've been</p> <p>24 designated in this case as a use of force expert. Is</p> <p>25 that the correct characteristic of your expert opinion?</p>	<p>1 A. When you say "adequate," I'm -- it just says,</p> <p>2 "Defensive Tactics Training." Like on -- on -- for</p> <p>3 instance, on Officer Lopera's training record, it doesn't</p> <p>4 indicate if, during that defensive tactics, was it</p> <p>5 weaponless retention techniques? Was it ground fighting?</p> <p>6 Was it something other than?</p> <p>7 It doesn't specifically say that during that</p> <p>8 course of that block that LVNR was, in fact, taught. So</p> <p>9 there's no way for me to discern if, during that</p> <p>10 quarterly training, which I think is appropriate and I</p> <p>11 think that's aggressive posture in a sense of training --</p> <p>12 it's no way for me to determine if, in fact, he received</p> <p>13 that training. I know just a couple months preceding</p> <p>14 this incident.</p> <p>15 Q. Do you have an opinion as to how much training</p> <p>16 an officer should receive on an annual basis in the LVNR</p> <p>17 specifically?</p> <p>18 A. I don't. Each state, obviously, through their</p> <p>19 POST standards or CALEA standards, are going to determine</p> <p>20 the level of training. It's a perishable skill. With</p> <p>21 that, it just can be the respective -- with each</p> <p>22 respective agency.</p> <p>23 Q. Are you familiar with the National Law</p> <p>24 Enforcement Training Center?</p> <p>25 A. Yes.</p>

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<p>1 Q. NLETC?</p> <p>2 A. Yes.</p> <p>3 Q. What's your familiarity with that organization?</p> <p>4 A. It's like an agency like PERF. They do a lot of</p> <p>5 oversight in police training and police liability and</p> <p>6 recommended best practices.</p> <p>7 Q. Are you affiliated in any way with NLETC?</p> <p>8 A. I am not.</p> <p>9 Q. Do you know anybody that is affiliated with</p> <p>10 NLETC, like their adjunct instructors or full-time</p> <p>11 instructors?</p> <p>12 A. I don't.</p> <p>13 Q. Have you reviewed -- well, do you have an</p> <p>14 understanding that the NLETC standards are what has been</p> <p>15 adopted by Las Vegas Metropolitan Police Department with</p> <p>16 respect to the LVNR?</p> <p>17 A. I believe so.</p> <p>18 Q. Okay. Do you have any criticism of Metro</p> <p>19 adopting, in whole or in part, the NLETC standards?</p> <p>20 A. No. I don't have any opinions on Metro's</p> <p>21 posture in their training at all in this matter.</p> <p>22 Q. Okay. Other than the fact that you think that</p> <p>23 the LVNR should have been always classified as</p> <p>24 intermediate level or higher?</p> <p>25 A. That's correct.</p>	<p>1 that there were several -- several -- seven separate</p> <p>2 Taser deployments totaling 39 seconds.</p> <p>3 Q. So the summary chart?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So every place in your report where it</p> <p>6 references that there were that many cycles or that many</p> <p>7 seconds, you took that from the printout report that</p> <p>8 Metro provided in this case?</p> <p>9 A. Yes. It's also mentioned in their -- in</p> <p>10 their -- their FIT report as well that they -- that they</p> <p>11 conducted.</p> <p>12 Q. And all I'm trying to determine is that -- where</p> <p>13 you got that information from, that this was not</p> <p>14 something that you derived from raw data sources or that</p> <p>15 you had access to the Taser or the software, et cetera,</p> <p>16 but you took that information from another report that</p> <p>17 we've received through this litigation.</p> <p>18 A. Yeah, directly through the Taser evidence sync</p> <p>19 log that depicts -- on Page 25.</p> <p>20 Q. Do you have an -- do you know what NMI is?</p> <p>21 A. Neuromuscular incapacitation.</p> <p>22 Q. And do you have an opinion as to how many times</p> <p>23 NMI was achieved, if any?</p> <p>24 A. I don't. I read in the record -- it might have</p> <p>25 been Borden's report -- I believe they said there was two</p>
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<p>1 Q. Okay. So with that qualification, you don't</p> <p>2 have any other --</p> <p>3 A. Well, as I mentioned, I can't discern looking --</p> <p>4 looking at someone's training record as to what the</p> <p>5 training entailed.</p> <p>6 Q. Well, I'm -- and I'm sorry, I'm not asking about</p> <p>7 Ken Lopera's training specifically on that question.</p> <p>8 I mean do you have any qualms about -- or issues</p> <p>9 or criticisms of Metro adopting, as an organization, the</p> <p>10 standards from NLETC?</p> <p>11 A. I have no opinion on that at all.</p> <p>12 Q. Okay. Is an LVNR a chokehold?</p> <p>13 A. Yes.</p> <p>14 Q. What kind of chokehold?</p> <p>15 A. Blood.</p> <p>16 Q. Do you know how many times the Taser was cycled?</p> <p>17 A. Seven times.</p> <p>18 Q. How do you know that?</p> <p>19 A. Based on the Taser printout.</p> <p>20 Q. And not based upon watching the video?</p> <p>21 A. No. Just by the Taser download printout that I</p> <p>22 have with me here today and that I've reviewed in the</p> <p>23 course of this -- my work in this matter.</p> <p>24 Q. And are those the Taser pulse graphs?</p> <p>25 A. No. I just looked at the Taser deployments,</p>	<p>1 that were -- actually achieved, the initial one and then</p> <p>2 one other one. I don't know if, in fact -- I did not</p> <p>3 look at the pulse graph to determine if there were more</p> <p>4 than -- than -- than the initial.</p> <p>5 Based on my review of the video, it seemed that</p> <p>6 there was at least one that I could see. From looking on</p> <p>7 that, it seemed like it worked as designed. Target area</p> <p>8 was back, as we know. The way in which he fell, it</p> <p>9 seemed that NMI was achieved during the initial Taser.</p> <p>10 Q. You said target in the back, and that's the</p> <p>11 proper place to shoot someone with a Taser?</p> <p>12 A. The best place for a number of reasons. A, you</p> <p>13 get greater probe spread. Shirts are tighter on the</p> <p>14 back. A larger muscle group. Inability for someone to</p> <p>15 grab and remove probes, typically.</p> <p>16 Q. Avoid the eyes, avoid soft tissues?</p> <p>17 A. Groin, all of that, yes.</p> <p>18 Q. Are you qualified -- and we'll get to your Taser</p> <p>19 experience and things of that -- later. Are you</p> <p>20 qualified to be able to read the Taser pulse graphs and</p> <p>21 explain to me what they mean?</p> <p>22 A. I should be.</p> <p>23 Q. Okay. Tell me, what is your Taser instructor</p> <p>24 level or your Taser experience?</p> <p>25 A. Obviously, I went through -- every year annually</p>

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<p>1 we go through Taser certification.</p> <p>2 Q. That would qualify you as a user; correct?</p> <p>3 A. User. And then when I went to Metropolitan</p> <p>4 Division in 2000 as a K-9 sergeant, I became an</p> <p>5 instructor, and then I went to SWAT in 2005 as a</p> <p>6 sergeant. I became a Taser instructor through Taser</p> <p>7 International.</p> <p>8 We train the people just within our 60-officer</p> <p>9 SWAT team on an annual basis. And basically -- so</p> <p>10 basically, from 2000 to 2010. When I left the Los</p> <p>11 Angeles Police Department in 2010, I maintained a Level 1</p> <p>12 reserve status. And throughout that time, I was,</p> <p>13 obviously, trained on the Taser on an annual basis as</p> <p>14 well.</p> <p>15 Q. As a user or as an instructor?</p> <p>16 A. As a user.</p> <p>17 Q. Were you ever a master instructor? My</p> <p>18 understanding is there was the four categories of</p> <p>19 qualifications.</p> <p>20 A. I was only a -- a primary instructor, not a</p> <p>21 master instructor.</p> <p>22 Q. What's the difference?</p> <p>23 A. A master instructor is additional certification</p> <p>24 levels.</p> <p>25 Q. But what does it do?</p>	<p>1 handcuffing technique or you can effect a handcuffing</p> <p>2 technique under power, to be able to do that while the</p> <p>3 trigger is depressed the entire time.</p> <p>4 Q. And there -- you said a five-second cycle?</p> <p>5 A. Yes.</p> <p>6 Q. Is that based upon -- what?</p> <p>7 A. That's what the standard is. Each time you pull</p> <p>8 the trigger, there's a five-second cycle that occurs.</p> <p>9 Q. So by design of the Taser itself, the X26?</p> <p>10 A. That's correct.</p> <p>11 Q. Are you aware of other Tasers that have a</p> <p>12 30-second cycle for one trigger pull?</p> <p>13 A. I do not know.</p> <p>14 Q. Okay. Have you ever deployed a Taser in your</p> <p>15 time as a police officer?</p> <p>16 A. Yes.</p> <p>17 Q. Hopefully not in your time as an expert?</p> <p>18 A. No. Not at depositions either.</p> <p>19 Q. Good. Good.</p> <p>20 A. No. Yes, I have.</p> <p>21 MR. SAYRE: Going to make an exception.</p> <p>22 MR. McNUTT: Today may be a first.</p> <p>23 Q. How many times have you deployed a Taser?</p> <p>24 A. I don't know. Several times.</p> <p>25 Q. Was it the X26 version that you've opined on in</p>
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<p>1 A. It allows you to teach, I guess, more on a</p> <p>2 broad-based level than you can just to the individual</p> <p>3 officer.</p> <p>4 Q. So you -- as an instructor, you were -- kind of</p> <p>5 trained the trainer in terms of your own department; as a</p> <p>6 master instructor, you could train other departments?</p> <p>7 A. You could.</p> <p>8 Q. Okay. What is your understanding of the purpose</p> <p>9 of NMI?</p> <p>10 A. It's basically to override the central and motor</p> <p>11 nerves -- your system, obviously, to be able to put your</p> <p>12 body into somewhat of a lock and where you cannot,</p> <p>13 obviously, move to that point and ultimately to be able</p> <p>14 to hand -- effect a handcuffing technique.</p> <p>15 Q. How long does NMI last?</p> <p>16 A. Typically the length of the duration of the --</p> <p>17 of the -- of the time in which that person's tased.</p> <p>18 Q. So when the charge is released -- by that, I</p> <p>19 mean the electrical charge being transferred from the</p> <p>20 Taser. When that is turned off, the subject can resume</p> <p>21 normal activity?</p> <p>22 A. Typically. After that five-second cycle, they</p> <p>23 should at that time reassess and, obviously, see if</p> <p>24 that -- give that person a reasonable opportunity to</p> <p>25 comply. And if they do, then you can effect a</p>	<p>1 your expert report?</p> <p>2 A. Yes. The last was, I believe -- the last time I</p> <p>3 deployed a Taser was the X26. We have different</p> <p>4 variations. When I came into law enforcement in 1988, so</p> <p>5 I believe LAPD -- I don't know the year we transitioned</p> <p>6 to the X26. I know we had the N26 for a period of time.</p> <p>7 We had the X2, I believe, as well.</p> <p>8 Q. You've said in your report that you've -- you've</p> <p>9 investigated approximately 100 or more use of force</p> <p>10 incidents as a police officer?</p> <p>11 A. Yes.</p> <p>12 Q. Were you part of a CIRT or a FIT team like we</p> <p>13 have here in Las Vegas? And do you know what I mean by</p> <p>14 those acronyms, force investigation team, critical</p> <p>15 incident review team?</p> <p>16 A. We have what's called Force Investigation</p> <p>17 Division. I've never worked that division. We could</p> <p>18 take -- as a sergeant in, say, Metro, K-9, or SWAT or</p> <p>19 even a sergeant working -- running a gang detail or a</p> <p>20 vice unit where I've worked before, you can conduct an --</p> <p>21 anything that was not considered a categorical use of</p> <p>22 force such as a head strike or, obviously, a shooting.</p> <p>23 But anything from the -- from Taser, dog bite,</p> <p>24 baton strikes, other -- unless it required suturing or</p> <p>25 hospitalization, I, as a sergeant, could -- could</p>

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<p>1 complete that entire use of force investigation.</p> <p>2 Q. Okay. So just let me -- I want to just make</p> <p>3 sure I understand the line where someone from the -- the</p> <p>4 task force, specific organization would have to come in.</p> <p>5 If there were no sutures -- so there was no --</p> <p>6 obviously no lethal force was involved, you could</p> <p>7 investigate your own team's use of force?</p> <p>8 A. Unless I was a percipient witness or unless I</p> <p>9 was involved in the use of force. And that involvement</p> <p>10 may involve planning as well by formulating the plan.</p> <p>11 And then if use of force was, in fact -- did, in fact,</p> <p>12 occur, then we'd have to bring in a noninvolved sergeant</p> <p>13 to handle the use of force.</p> <p>14 Q. What constitutes a use of force that had to be</p> <p>15 reported at LAPD? And I presume you're talking about</p> <p>16 LAPD.</p> <p>17 A. Any use of force, other than handcuffing</p> <p>18 technique or a twist lock. And wrist locks were not</p> <p>19 considered anything where -- anything from basically --</p> <p>20 from above the level of pepper spray and above -- if you</p> <p>21 took someone to the ground would be considered a use of</p> <p>22 force, a leg sweep.</p> <p>23 But a typical wrist lock, twist lock, control</p> <p>24 hold to effect a handcuffing technique was not reportable</p> <p>25 at that time unless there was injury.</p>	<p>1 think there's a higher level of agitation, especially if</p> <p>2 it's a CNS stimulant like methamphetamine or cocaine.</p> <p>3 With that, could -- behavior may be more irrational</p> <p>4 during the course of the fight, where they're not</p> <p>5 listening in the sense --</p> <p>6 Q. I'm sorry, irrational or rational?</p> <p>7 A. Irrational.</p> <p>8 Q. Thank you.</p> <p>9 A. Where they may be not listening to what you are</p> <p>10 saying or complying with your verbal commands.</p> <p>11 Q. Does that make it harder for the officer to</p> <p>12 apprehend or deal with the suspect?</p> <p>13 A. It can.</p> <p>14 Q. Is a police officer -- is he reactionary to a</p> <p>15 suspect's actions, or is he proactive?</p> <p>16 A. Depends. Typically reacts.</p> <p>17 Q. Have you ever seen it necessary to use a Taser</p> <p>18 on someone that was under the influence of</p> <p>19 methamphetamine?</p> <p>20 A. Yes.</p> <p>21 Q. Because they would not comply?</p> <p>22 A. Because their actions were aggressive and/or</p> <p>23 combative.</p> <p>24 Q. Is it ever -- have you ever seen an incident</p> <p>25 when a suspect's words did not equal -- equate to his</p>
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<p>1 Q. Okay. How many times have you seen a Taser</p> <p>2 deployed, even if you didn't do it, in terms of -- not in</p> <p>3 training, but on the street when you were a patrolman or</p> <p>4 in any other capacity as a police officer?</p> <p>5 A. Probably 50.</p> <p>6 Q. Okay. Have you ever seen a Taser deployed on</p> <p>7 someone under the effects of illegal narcotics?</p> <p>8 A. Yes.</p> <p>9 Q. What kind of illegal narcotics?</p> <p>10 A. Primarily CNS stimulants. Earlier on, PCP</p> <p>11 was -- was quite common in South Central Los Angeles</p> <p>12 where I worked most of my career.</p> <p>13 Q. Do suspects on illegal narcotics react the same</p> <p>14 as suspects that are not on illegal narcotics when hit</p> <p>15 with a Taser?</p> <p>16 A. It depends. It depends on the duration of the</p> <p>17 tasing. It depends on what the substance is. It depends</p> <p>18 on that person's level of intoxication. It -- it just</p> <p>19 depends on the individual.</p> <p>20 Q. Have you ever been in a hand-to-hand fight with</p> <p>21 someone on illegal narcotics?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And is it your experience that they exert more</p> <p>24 or less strength than normal?</p> <p>25 A. I don't know if it's more or less strength. I</p>	<p>1 actions?</p> <p>2 A. How do you mean?</p> <p>3 Q. Have you ever seen a suspect say that he will</p> <p>4 comply but his actions indicated to you, the trained</p> <p>5 officer, that he was not complying?</p> <p>6 A. Yes.</p> <p>7 Q. What matters more to you, his actions or his</p> <p>8 words?</p> <p>9 A. His actions.</p> <p>10 Q. Why, because those are lethal or can be?</p> <p>11 A. Just because you're -- I mean, you -- there</p> <p>12 could be -- I'm looking for actions. There could be a</p> <p>13 language barrier. There could be -- some could be deaf.</p> <p>14 They could be under the influence. There's a myriad of</p> <p>15 reasons.</p> <p>16 Q. Or they could be lying?</p> <p>17 A. They could be lying.</p> <p>18 Q. When you were a patrol officer, were you able to</p> <p>19 discern when someone was under the influence of illegal</p> <p>20 narcotics?</p> <p>21 A. I was a drug recognition expert on the Los</p> <p>22 Angeles Police Department.</p> <p>23 Q. As a patrolman?</p> <p>24 A. As patrol officer.</p> <p>25 Q. Okay. When you first became an officer, you</p>

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<p>1 were?</p> <p>2 A. Not first. I think in like 1994 I was certified</p> <p>3 before I went to -- started working narcotics.</p> <p>4 Q. Do you think patrol officers are generally</p> <p>5 taught today to look for signs of someone being under the</p> <p>6 influence?</p> <p>7 A. It depends. I think they're looking,</p> <p>8 obviously -- most officers go through what -- you know, a</p> <p>9 drug recognition class. They may not go through the</p> <p>10 expert certification, but you're looking for behavioral</p> <p>11 cues that may indicate to that officer that a person may</p> <p>12 be impaired, under the influence of -- could be a CNS</p> <p>13 stimulant, alcohol, whatever it may be.</p> <p>14 Q. You have an opinion as to whether Officer Lopera</p> <p>15 had the ability or the training to determine and see</p> <p>16 those cues as to whether someone was exhibiting signs of</p> <p>17 being under the influence?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay. You don't know because you haven't seen</p> <p>20 anything in the record or you've seen stuff in the record</p> <p>21 and you can't make a determination?</p> <p>22 A. I don't recall. I looked at his training</p> <p>23 record, and I believe there was some training in there</p> <p>24 that coincides with that, but I don't know if, during his</p> <p>25 initial interaction and/or a time in which he began a</p>	<p>1 looks like. I mean, you see someone --</p> <p>2 Q. I don't.</p> <p>3 A. You see someone on the corner. I'm talking</p> <p>4 extreme mental illness, where you see the person on the</p> <p>5 corner, they're maybe flailing arms or the transient,</p> <p>6 unfortunately, that may be in front of a Starbucks that</p> <p>7 may be talking to him- or herself. I think that's</p> <p>8 apparent when we see that.</p> <p>9 You know, if someone's bipolar or paranoid</p> <p>10 schizophrenic or off psychotropic medication, there's no</p> <p>11 way to determine that initially, once again, unless you</p> <p>12 have information from the onset that that person is under</p> <p>13 the influence or mentally ill.</p> <p>14 Q. Have you reviewed videos of this incident?</p> <p>15 A. Yes.</p> <p>16 Q. And by "this incident," you know what I'm</p> <p>17 discussing; right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. What videos -- I'm not interested in the</p> <p>20 other officer's body-worn cameras that maybe showed up</p> <p>21 after the fact. What videos have you reviewed, whether</p> <p>22 they were produced in this case or whether you reviewed</p> <p>23 them online?</p> <p>24 A. I have reviewed the full video which was of</p> <p>25 LVM -- LVMPD, the media briefing which is 20 minutes</p>
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<p>1 foot pursuit of Mr. Farmer, that at any time he knew that</p> <p>2 he was under the influence of anything at that time.</p> <p>3 Q. Can a patrol officer confuse someone that's</p> <p>4 mentally ill with being under the influence of drugs and</p> <p>5 alcohol?</p> <p>6 A. It depends.</p> <p>7 Q. What does it depend on?</p> <p>8 A. Well, it depends if they're exhibiting certain</p> <p>9 signs and behaviors. It might be something related to</p> <p>10 the eyes. It might be the way in which their mannerisms</p> <p>11 may be. It may be a compilation of both, that maybe</p> <p>12 someone might be mentally ill -- mentally ill and under</p> <p>13 the influence of narcotics.</p> <p>14 Q. Does it depend on how long the officer has to</p> <p>15 assess and make that determination?</p> <p>16 A. It's that. It depends on lighting conditions.</p> <p>17 It depends on the environment that they're in. It</p> <p>18 depends on information derived, maybe from the source of</p> <p>19 the call if it's a call that they're -- they're generated</p> <p>20 to. It depends on a number of factors.</p> <p>21 Q. So if you had a five-second exposure to somebody</p> <p>22 that just walked in the room, could you be able to tell</p> <p>23 in this lighting, in this area whether or not they were</p> <p>24 on drugs or whether they were mentally ill?</p> <p>25 A. Well, I think we all know what mentally ill</p>	<p>1 and 58 seconds. Within that briefing, there was</p> <p>2 obviously -- there was videos that were shown. The</p> <p>3 merged video at four minutes and three seconds.</p> <p>4 And then there was a -- a video of Tashi Farmer:</p> <p>5 Body Cam Shows Unarmed Black Man Fatally Tased and Choked</p> <p>6 to Death By Cop. That was a 2-minute, 19-second videos.</p> <p>7 Q. All produced in this litigation?</p> <p>8 A. Yes.</p> <p>9 Q. And have you reviewed any videos that were</p> <p>10 opened online?</p> <p>11 A. I don't believe so, no.</p> <p>12 Q. Have you reviewed a video that shows, from the</p> <p>13 perspective of Officer Lopera's body-worn camera the</p> <p>14 initial interaction with Tashi Farmer?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall how long Mr. Farmer and Mr. Lopera</p> <p>17 interacted before Mr. Farmer began running?</p> <p>18 A. Seconds.</p> <p>19 Q. Okay. Do you think that's long enough to make a</p> <p>20 determination as to whether that was mental illness or he</p> <p>21 was under the influence of illegal narcotics?</p> <p>22 A. To make that determination, to do -- someone's</p> <p>23 under the influence takes -- it's a 12-step process to --</p> <p>24 to make that determination. But the things I did see on</p> <p>25 video would make a reasonable officer believe that there</p>

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<p>1 was something going on with Mr. Farmer.</p> <p>2 Q. Something including the potential that he was</p> <p>3 under the influence of illegal narcotics?</p> <p>4 A. Under the influence, mentally ill, or both.</p> <p>5 There was something that was transpiring, that he --</p> <p>6 obviously, he was anxious and showed some anxiety,</p> <p>7 appeared to be sweating, and his mannerisms would, I</p> <p>8 think, make a reasonable officer believe that there was</p> <p>9 something occurring at that time that -- that -- I don't</p> <p>10 know.</p> <p>11 Q. As it turned out, are you aware that Mr. Farmer</p> <p>12 was under the influence of illegal methamphetamines?</p> <p>13 A. I am aware of that.</p> <p>14 Q. You've stated a couple times in your report,</p> <p>15 broadly, that Officer Lopera did not properly assess the</p> <p>16 suspect.</p> <p>17 Do you remember that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you think -- do you have an opinion that</p> <p>20 Officer Lopera did not properly assess the suspect at</p> <p>21 their initial interaction?</p> <p>22 A. No. I think the -- I think the assessment</p> <p>23 occurs, obviously, throughout the incident, but what he</p> <p>24 did see or what I saw on video, I don't -- can't speak to</p> <p>25 what his thoughts or opinions were, but what I did see is</p>	<p>1 taking the person's pulse; obviously, searching the</p> <p>2 person; doing a field sobriety test, blood alcohol.</p> <p>3 There's a number of -- of things that go into that</p> <p>4 process.</p> <p>5 Q. So it's not a 12-step process necessarily</p> <p>6 sequentially; it's -- there are 12 things that would --</p> <p>7 you would optimally look for. Is that -- am I</p> <p>8 understanding that correctly?</p> <p>9 A. Correct. And that's if you're going to be</p> <p>10 looking to book someone under the influence of a narcotic</p> <p>11 or under the influence of alcohol.</p> <p>12 Q. Okay.</p> <p>13 A. That's typically what the standardized training</p> <p>14 is for DREs. Officers in the field can make a reasonable</p> <p>15 assumption based on actions and mannerisms, and then with</p> <p>16 that, obviously, bring in the DRE to do that evaluation,</p> <p>17 maybe back at the station.</p> <p>18 Q. When you say "DRE," what is that?</p> <p>19 A. A drug recognition expert.</p> <p>20 Q. Okay. Are patrol officers in Las Vegas Metro</p> <p>21 expected to be drug recognition experts?</p> <p>22 A. They are expected, I think, through their</p> <p>23 training. I think it's consistent with standardized</p> <p>24 training that they're -- are to recognize when someone is</p> <p>25 under the influence, maybe of alcohol. It could be of a</p>
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<p>1 during the course of that force, leading up to the tasing</p> <p>2 and then the subsequent force after that, is that he</p> <p>3 should have considered at that point that either</p> <p>4 Mr. Farmer was mentally ill and/or experiencing a mental</p> <p>5 crisis and possibly under the influence.</p> <p>6 Q. And you said earlier that even if he was</p> <p>7 strictly under the influence of mental illness -- strike</p> <p>8 that.</p> <p>9 You said earlier that if it was true that</p> <p>10 Mr. Farmer was simply mentally ill, that Mr. -- Officer</p> <p>11 Lopera should have pursued him; correct?</p> <p>12 A. Yes, based on where he went, I believe, down to</p> <p>13 that corridor, that was not -- it was not accessed, other</p> <p>14 than for employees. I -- I don't have a problem with the</p> <p>15 initial following of him.</p> <p>16 Q. You talked about a 12-step process to assess</p> <p>17 someone's situation.</p> <p>18 A. Right.</p> <p>19 Q. Can you explain that 12-step process.</p> <p>20 A. That's a -- it's a DRE process, everything</p> <p>21 from -- that you go through when you take someone into --</p> <p>22 into custody. And that's basically from the initial</p> <p>23 conversation, collecting information, conducting a myriad</p> <p>24 of investigations.</p> <p>25 That could be low light, darkroom examinations;</p>	<p>1 CNS stimulant or depressant. Depending on what, you</p> <p>2 know, that person's doing at the time.</p> <p>3 Q. So that's -- I apologize, but maybe I didn't ask</p> <p>4 you a good question because your answer is nonresponsive.</p> <p>5 Are they expected -- are patrol officers expected to be a</p> <p>6 drug recognition expert as you've testified here?</p> <p>7 A. Expected to be an expert, no.</p> <p>8 Q. Okay. Is it your opinion that most LAPD</p> <p>9 officers are drug recognition experts that are assigned</p> <p>10 to a patrol unit?</p> <p>11 A. They are not, no.</p> <p>12 Q. Okay. Is it your opinion that Las Vegas</p> <p>13 Metropolitan patrol officers are expected to be drug</p> <p>14 recognition experts when assigned to a patrol unit?</p> <p>15 A. Most likely not.</p> <p>16 Q. Okay. You've reviewed quite a bit of testimony</p> <p>17 in preparation for providing your expert opinion. I</p> <p>18 think I saw that you reviewed transcribed FIT reports;</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Transcribed CIRT reports; correct?</p> <p>22 A. Yes.</p> <p>23 Q. You've reviewed various deposition testimony;</p> <p>24 correct?</p> <p>25 A. That's correct.</p>

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<p>1 Q. Did you -- when reviewing all those statements</p> <p>2 and sworn testimony, did you give anyone's testimony more</p> <p>3 credibility than anyone else's testimony?</p> <p>4 A. No. I don't make credibility determinations at</p> <p>5 all.</p> <p>6 Q. Why not?</p> <p>7 A. As an -- as an expert, I need to be objective.</p> <p>8 Q. Does it matter to you whether one of the people</p> <p>9 providing testimony was actually there versus hearing</p> <p>10 about the incident later or seeing the videotape later?</p> <p>11 A. Well, it depends. Even eyewitness testimony</p> <p>12 sometimes --</p> <p>13 Q. Sure.</p> <p>14 A. -- people are looking at things that can be</p> <p>15 completely off as to what -- what really transpired.</p> <p>16 Q. But the question stands, and I'll give you an</p> <p>17 example: Officer Lif, Officer Lopera's partner, arrived</p> <p>18 at the scene after officer -- or, excuse me, Tashi Farmer</p> <p>19 was already in custody; is that your understanding?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So could she -- could her testimony have</p> <p>22 any real influence as to, you know, how the takedown</p> <p>23 occurred, the tasing, the cycles, the LVNR, et cetera?</p> <p>24 A. No.</p> <p>25 Q. Okay.</p>	<p>1 fine. Anyone can be asked those, and anyone can provide</p> <p>2 an answer as -- based on their understanding and</p> <p>3 foundation.</p> <p>4 My question is when you read all this testimony</p> <p>5 and you were reading the information of a person that was</p> <p>6 not present during either the tasing or the -- the use of</p> <p>7 the LVNR or the cuffing, did you still give that person's</p> <p>8 testimony as much weight as, say, Sergeant Crumrine who</p> <p>9 was there for most of the events?</p> <p>10 A. Well, I don't know if I would give it any more</p> <p>11 weight as I would, I think, the percipient witness,</p> <p>12 someone that's there who's seeing this situation, you</p> <p>13 know, unfold. So, of course, I'm going to take that</p> <p>14 person's testimony, not any more credible, but being the</p> <p>15 fact that they were there is -- I think would -- more</p> <p>16 significance.</p> <p>17 Q. So someone that wasn't there for, say, the</p> <p>18 tasing or the use of the LVNR or the handcuffing,</p> <p>19 their -- their opinion about those events is really no</p> <p>20 better than yours or mine, reviewing it after the fact;</p> <p>21 is that correct?</p> <p>22 A. I think that's fair.</p> <p>23 Q. Okay. When a police officer asks a civilian</p> <p>24 bystander for help, does that indicate to you that he has</p> <p>25 the situation under control?</p>
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<p>1 A. Other than what would be reasonable within her</p> <p>2 department standards, based -- if she was given the</p> <p>3 information, would -- as she testified, would, you know,</p> <p>4 seven cycles of a Taser be reasonable or would --</p> <p>5 Q. Well, that's a policy question, and I'm talking</p> <p>6 about percipient witness information.</p> <p>7 MR. SAYRE: Maybe you could let him finish his</p> <p>8 answer, please.</p> <p>9 MR. McNUTT: And I'm clarifying my question</p> <p>10 because he's going on a tangent.</p> <p>11 Q. So that -- that's a policy question, and that's</p> <p>12 a separate issue. Anybody can be asked those things</p> <p>13 after the fact. And my question was simply directed</p> <p>14 towards what could Officer Lif testify about, based upon</p> <p>15 her percipient knowledge? That's the question.</p> <p>16 MR. SAYRE: I -- I object to your interrupting</p> <p>17 his answer. If it -- if he's going astray, as you</p> <p>18 believe, at least let him finish his answer, and then you</p> <p>19 can point that out to him.</p> <p>20 Did you finish your answer?</p> <p>21 THE WITNESS: I did, I believe.</p> <p>22 Q. Okay. Now can you answer my question?</p> <p>23 A. Can you repeat it, please.</p> <p>24 Q. Sure. So my -- I understand the per -- well, I</p> <p>25 understand the after-the-fact policy questions. That's</p>	<p>1 A. No. I think if you solicit assistance from a</p> <p>2 bystander or citizen, I think you're asking for help</p> <p>3 because you may perceive you need help.</p> <p>4 Q. Have you ever asked a citizen, bystander for</p> <p>5 help in apprehending a suspect?</p> <p>6 A. I don't recall. I know citizens have intervened</p> <p>7 and assisted me at times, but LAPD, we're typically a</p> <p>8 two-officer unit, so we're -- typically have a partner.</p> <p>9 But people have -- you know, unsolicited, have assisted</p> <p>10 me, but I -- you know, I may have asked for help.</p> <p>11 Q. In any of the use of forces that you</p> <p>12 investigated, did any of those officers request help from</p> <p>13 a civilian bystander?</p> <p>14 A. I don't recall.</p> <p>15 Q. What training did you have to investigate use of</p> <p>16 force for LAPD? So once you become a sergeant or a</p> <p>17 supervisor, is there -- is that part of your training to</p> <p>18 achieve that position?</p> <p>19 A. Yes. You go through basic sergeant school which</p> <p>20 is a month long. Within that, there's, I think, a couple</p> <p>21 days of use of force investigations, go through periodic</p> <p>22 updates on use of force investigations, as well as -- I</p> <p>23 think there's a segment of the West Point Leadership</p> <p>24 Academy that I went to that we discussed use of force</p> <p>25 investigations. And then the annual training I would</p>

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<p>1 receive as a sergeant my last 14 years.</p> <p>2 Q. How long did the average use of force</p> <p>3 investigation that you conducted -- of those 100 that you</p> <p>4 talk about in your resume, how long did it take you to</p> <p>5 do?</p> <p>6 A. It depends. Typically, with K-9 bites, we're a</p> <p>7 little bit longer because there's always a follow-up. A</p> <p>8 lot of times due to the injuries, we wouldn't get a</p> <p>9 statement right away from that person. But typically use</p> <p>10 of a baton or a Taser, pepper spray, we get it done that</p> <p>11 day -- you get it done before you go home.</p> <p>12 Q. You investigate -- the officer says, "Look, I --</p> <p>13 he was resisting. I leg swept him, we went down, we</p> <p>14 rolled around, I got him in a -- my partner came up, and</p> <p>15 we cuffed him."</p> <p>16 Is that a use of force you would've</p> <p>17 investigated?</p> <p>18 A. That and I'd need to interview any witnesses,</p> <p>19 look for any video, and scan the area for any potential</p> <p>20 witnesses to the event, any evidence. You interview,</p> <p>21 obviously, the individual who the force is used on.</p> <p>22 Q. Have you ever, as a police officer,</p> <p>23 interviewed -- investigated a use of force as significant</p> <p>24 as this one that we're talking about in this case?</p> <p>25 MR. SAYRE: By that, do you mean death?</p>	<p>1 A. Yes.</p> <p>2 Q. What about nervous, evasive, or erratic</p> <p>3 behavior?</p> <p>4 THE REPORTER: What about nervous what?</p> <p>5 MR. McNUTT: Evasive, erratic behavior.</p> <p>6 A. It can.</p> <p>7 Q. Do you consider a suspect running -- running</p> <p>8 away from police to be merely going about one's business?</p> <p>9 A. It depends on what preceded him running away or</p> <p>10 her running away.</p> <p>11 Q. Okay. What is your understanding of the</p> <p>12 testimony of Officer Crumrine, sometimes referred to as</p> <p>13 Sergeant Crumrine? Have you reviewed his FIT report?</p> <p>14 A. I have.</p> <p>15 Q. Have you reviewed his CIRT report?</p> <p>16 A. I have.</p> <p>17 Q. Have you reviewed his deposition transcript?</p> <p>18 MR. ANDERSON: When you say "report," you mean</p> <p>19 statement?</p> <p>20 MR. McNUTT: Yes, that's right. I'm sorry.</p> <p>21 It comes as a written -- we think of it as a</p> <p>22 report, but it's a statement.</p> <p>23 MR. ANDERSON: Is it a report or statement?</p> <p>24 Just making sure.</p> <p>25 Q. And -- did you answer the question? I don't</p>
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<p>1 MR. McNUTT: No. By that, I mean the use of a</p> <p>2 Taser, the use of the LVNR, any of those things.</p> <p>3 A. No. As I mentioned, the use of -- we call it a</p> <p>4 carotid hold, upper body control hold, that would be</p> <p>5 something that Force Investigation Division from LAPD</p> <p>6 would investigate because it paralleled lethal force.</p> <p>7 Q. Okay. Do those investigators have more training</p> <p>8 than just the -- the hours that you got in the sergeant</p> <p>9 school?</p> <p>10 A. Well, their job -- we have an entire Force</p> <p>11 Investigation Division that do nothing but investigate</p> <p>12 force, so obviously, they're better trained and better</p> <p>13 equipped to investigate those type of events.</p> <p>14 Q. Can you define "reasonable suspicion."</p> <p>15 A. A reasonable officer with similar training and</p> <p>16 experience would believe that a person is connected to</p> <p>17 some type of crime.</p> <p>18 Q. Is the reasonable suspicion standard more or</p> <p>19 less stringent than probable cause?</p> <p>20 A. It's less.</p> <p>21 Q. Does reasonable suspicion require common sense</p> <p>22 judgment about human behaviors or perfect certainty?</p> <p>23 A. Common sense.</p> <p>24 Q. Can unprovoked flight give rise to reasonable</p> <p>25 suspicion?</p>	<p>1 know -- I just didn't hear you. Did you review his</p> <p>2 deposition transcript?</p> <p>3 A. I reviewed all of his statements, yes.</p> <p>4 Q. Are you aware of how he characterized the neck</p> <p>5 restraint that Officer Lopera used?</p> <p>6 A. As an LVNR.</p> <p>7 Q. Okay. In all three of those statements?</p> <p>8 A. I believe he did. He had -- he characterized it</p> <p>9 as a -- "had Farmer in a back lying LVNR."</p> <p>10 Q. Okay. Do you disagree with his characterization</p> <p>11 of what the neck restraint being utilized was?</p> <p>12 A. I don't know if it was a rear naked choke or an</p> <p>13 LVNR.</p> <p>14 Q. Do you accept his testimony as true?</p> <p>15 A. I'm -- I'm -- base it off what I've reviewed on</p> <p>16 the video and what the statements were. Though, based on</p> <p>17 Officer Lopera's statements that he used a rear naked</p> <p>18 choke or "I rear naked choked his ass," the statements he</p> <p>19 made is what I went off of. But for me to look at the</p> <p>20 video over and over again, I can't discern if it's an</p> <p>21 LVNR or a rear naked choke.</p> <p>22 Q. And that's a good point. Let's talk about that.</p> <p>23 Are you qualified to delineate between an LVNR versus a</p> <p>24 rear naked choke or any other choke by -- by training or</p> <p>25 expertise?</p>

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<p>1 A. In what respect?</p> <p>2 Q. Do you have any martial arts training?</p> <p>3 A. I do.</p> <p>4 Q. What is it?</p> <p>5 A. Brown belt in Kempo Karate. I trained Brazilian</p> <p>6 jiu-jitsu for about three years up to a purple belt. I</p> <p>7 was part of the LAPD's initial transition team when we</p> <p>8 were looking at our ground fighting team in the -- I</p> <p>9 think it was 1996.</p> <p>10 We were looking at ground fighting and</p> <p>11 weaponless retention where we had a cadre of people come</p> <p>12 in to training, a -- training division and develop the</p> <p>13 arrest and control school that currently exists. I was</p> <p>14 one of, I think, 14 or so people that assisted with</p> <p>15 that -- that training.</p> <p>16 Q. Do you think you are qualified as an expert in</p> <p>17 the area of combatives or officer defensive tactics? I'm</p> <p>18 not sure what phrase you would prefer to use.</p> <p>19 A. Within reason, yes.</p> <p>20 Q. Okay. What's -- what are the -- what are the</p> <p>21 qualifications in --</p> <p>22 A. I can't make a med -- I can't make a medical</p> <p>23 determination as to what the result of someone's death</p> <p>24 was, was it based on a, you know, blood choke, an air</p> <p>25 choke, depending on what transpired. But I can look at</p>	<p>1 So part of the training involved is that -- to</p> <p>2 be mindful of not to, obviously, use force to the front</p> <p>3 of the trachea. And that's the same as what I received</p> <p>4 in LAPD as well.</p> <p>5 Q. Okay. May I stop you there?</p> <p>6 A. Sure.</p> <p>7 Q. You can certainly finish, but I just want to</p> <p>8 break that down a little bit because you confused me.</p> <p>9 We're just talking about Kenbo Karate which is a civilian</p> <p>10 discipline; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And that -- so that wasn't through LAPD?</p> <p>13 A. No. That was growing up.</p> <p>14 Q. Okay. Great. And so the term -- the term</p> <p>15 "choke" in karate -- and I just want to get definitions</p> <p>16 so we aren't confusing and the transcript is clear.</p> <p>17 The term "choke" in karate incorporates multiple</p> <p>18 types of chokes; is that true?</p> <p>19 A. It does, because with karate, you're not just --</p> <p>20 unlike a naked choke which is without a gi or without</p> <p>21 any -- you're naked, we use a gi in karate, so a lot of</p> <p>22 the chokes involve the use of the actual gi during the</p> <p>23 choke.</p> <p>24 Q. Okay. And you may have said this, but I just</p> <p>25 didn't catch it. Does that term "choke" include air and</p>
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<p>1 basic common ground fighting tactics to see if that</p> <p>2 coincides or comports with training on departments they</p> <p>3 may have received.</p> <p>4 Q. Okay. In Kenbo (sic) Karate -- was that the</p> <p>5 first one you referenced?</p> <p>6 A. Yes.</p> <p>7 Q. What terminology does that discipline use for a</p> <p>8 neck restraint?</p> <p>9 A. Choke.</p> <p>10 Q. Just a choke. Are there any other phrases,</p> <p>11 synonyms that they use?</p> <p>12 A. A choke.</p> <p>13 Q. Okay. Do they -- and what does a choke in Kenbo</p> <p>14 Karate mean, in terms of is it a blood choke, an air</p> <p>15 choke, or does that phrase encompass all types of chokes?</p> <p>16 A. Obviously, it's Kempo, and the reason -- it's</p> <p>17 primarily -- obviously, we discern -- differentiate</p> <p>18 between a blood choke, obviously, for the carotid</p> <p>19 arteries to a neck choke that obviously limits or</p> <p>20 restricts air through the trachea.</p> <p>21 So there is very much a difference between the</p> <p>22 two. And we're trained as there is a difference due to</p> <p>23 the fact that there is a potential death involved,</p> <p>24 obviously, as relates to air choking someone because you</p> <p>25 can crush the trachea.</p>	<p>1 blood chokes in Kenbo Karate?</p> <p>2 A. It's Kempo, and yes.</p> <p>3 Q. Kempo?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Are both types of chokes authorized, for</p> <p>6 lack of a better term, in Kempo Karate?</p> <p>7 A. Well, it's no -- really authorization. You're</p> <p>8 not held to the standard as you would be in law</p> <p>9 enforcement. It's -- it would be in -- obviously in --</p> <p>10 in a situation in your private life where you believe</p> <p>11 that someone's actions were aggressive and/or combative</p> <p>12 and you needed to utilize a choke.</p> <p>13 Q. Sure. But are there competitions in Kempo</p> <p>14 Karate?</p> <p>15 A. There are, but it's basically on katas and</p> <p>16 pinans which are movements and not based on choking.</p> <p>17 Q. Okay. Let's talk about the Brazilian jiu-jitsu.</p> <p>18 When did you train in Brazilian jiu-jitsu?</p> <p>19 A. 1994 through '97 and then intermittently since</p> <p>20 that time.</p> <p>21 Q. Okay. Are you familiar with the terminology</p> <p>22 that is utilized through the Brazil -- the discipline of</p> <p>23 Brazilian jiu-jitsu related to a neck restraint?</p> <p>24 A. Yes. I mean, they -- they use the term "choke."</p> <p>25 They use the term -- you know, the word "rear naked</p>

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<p>1 choke" really came about during the MMA time, the MMA</p> <p>2 circuit.</p> <p>3 That's when that became a -- you know, we as</p> <p>4 people that were involved in that discipline, that really</p> <p>5 became -- you know, they were trying to identify each</p> <p>6 movement and then they obviously used that. When you</p> <p>7 were not using your gi and it was naked, they -- they</p> <p>8 developed that term over "rear naked choke."</p> <p>9 Q. And can you explain to me what a rear naked</p> <p>10 choke is under the Brazilian jiu-jitsu discipline?</p> <p>11 A. It's similar to what the -- a rear naked choke</p> <p>12 is. Under MMA is that obviously you're -- you're</p> <p>13 utilizing restraint on the neck through the carotid</p> <p>14 arteries to cut off the blood. Typically, 7 to 12</p> <p>15 seconds is going to put someone out.</p> <p>16 You're basically using your off hand to connect</p> <p>17 with your bicep and you're depressing, obviously, the</p> <p>18 sides of the person's neck and putting them, obviously,</p> <p>19 in a restraint that's going to cut off the blood and put</p> <p>20 them to -- put them out.</p> <p>21 Q. Do you ever define a rear naked choke in any of</p> <p>22 your disciplines that you're familiar with to include an</p> <p>23 air choke?</p> <p>24 A. No.</p> <p>25 Q. Okay. Tell me what the difference if -- well,</p>	<p>1 supposed to be protected; is that fair?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. What are the differences between the LVNR</p> <p>4 and the rear naked choke?</p> <p>5 A. Just the way in which the right arm connects to</p> <p>6 the bicep or the off arm connects to the bicep and -- and</p> <p>7 applies the pressure.</p> <p>8 Q. So is it your opinion that you can obtain more</p> <p>9 pressure on the neck from a rear naked choke versus --</p> <p>10 than you can with a lateral vascular neck restraint?</p> <p>11 A. It depends on who's applying it. Depends on</p> <p>12 their level of proficiency. Depends on the level of</p> <p>13 resistance. There's a number of things that factor into</p> <p>14 the effectiveness of the -- of the whole.</p> <p>15 Q. Okay. So can someone achieve control over a</p> <p>16 suspect by utilizing a rear naked choke and an LVNR?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Can someone cause unconsciousness through an</p> <p>19 LVNR and a rear naked choke?</p> <p>20 A. Yes.</p> <p>21 Q. Through a blood choke?</p> <p>22 A. That's correct.</p> <p>23 Q. Are you aware of the reason why the trainers or</p> <p>24 the developers of the LVNR specify that they want the</p> <p>25 hands to be clasped together?</p>
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<p>1 is there a difference between a rear naked choke and a</p> <p>2 LVNR, a lateral vascular neck restraint?</p> <p>3 A. Typically, the hands are clasped to the side in</p> <p>4 an LVNR. You wouldn't go to a full, which we would use a</p> <p>5 full carotid by, obviously, attaching to the back of the</p> <p>6 bicep to do that. You just -- you're depressing,</p> <p>7 obviously, the sides of the neck and then cutting off the</p> <p>8 blood.</p> <p>9 The end result is -- is the same, but with the</p> <p>10 rear naked choke, you're controlling the head more, in</p> <p>11 the sense where you're controlling the head and the back</p> <p>12 of the neck much more so than you are during an LVNR.</p> <p>13 Q. Okay. Let's talk about some principles or some</p> <p>14 elements, if you will, of a rear naked choke versus a</p> <p>15 LVNR. They're both blunt chokes; correct?</p> <p>16 A. That's right.</p> <p>17 Q. They both have an -- an arm that encircles the</p> <p>18 subject's neck; correct?</p> <p>19 A. Yes.</p> <p>20 Q. They both intend to compress the carotid</p> <p>21 arteries; correct?</p> <p>22 A. Obviously, the ones to the side, not to the</p> <p>23 rear.</p> <p>24 Q. Okay. And they both have a pocket in the</p> <p>25 encircling elbow in which the suspect's throat is</p>	<p>1 A. I don't.</p> <p>2 Q. Do you have any expert opinion on that at all?</p> <p>3 A. To keep the head -- keep -- obviously, to be</p> <p>4 able to pry -- apply the pressure and keep the head</p> <p>5 situated where it is.</p> <p>6 Q. Would you be surprised if I showed you in their</p> <p>7 training manual where they say that the reason for the</p> <p>8 hand clasp is in order to exert maximum, quote, pressure</p> <p>9 on the neck?</p> <p>10 A. No. I wouldn't be surprised.</p> <p>11 Q. You wouldn't be surprised?</p> <p>12 A. I would not.</p> <p>13 Q. Okay. Does that imply to you that they want --</p> <p>14 they think that the hand placement can get more pressure</p> <p>15 on the neck and not less?</p> <p>16 A. By -- by using an LVNR in lieu of a rear naked</p> <p>17 choke?</p> <p>18 Q. Or just by that hand placement.</p> <p>19 A. No. You're looking for -- you're looking for</p> <p>20 maximum pressure to put that person out as quick as you</p> <p>21 can to stop their behavior.</p> <p>22 Q. Perfect. I didn't have that -- I didn't even</p> <p>23 have to ask why. The goal is to render the suspect under</p> <p>24 control as quickly as possible; right?</p> <p>25 A. That's correct.</p>

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<p>1 Q. And is it better or worse for the suspect's</p> <p>2 health if he's rendered -- let's say he's going to be</p> <p>3 rendered unconscious at some point. Is it better or</p> <p>4 worse for the suspect's health if it happens quickly and</p> <p>5 then he's revived quickly or if it takes a long time and</p> <p>6 there's a long struggle before he's rendered unconscious?</p> <p>7 A. That's a medical opinion. A common sense is</p> <p>8 that least amount of struggle; having that person come</p> <p>9 out; revive that person within a couple seconds;</p> <p>10 obviously, hopefully, have them handcuffed; not have a</p> <p>11 prolonged incident is the desired result.</p> <p>12 That's why there's parameters based on the use</p> <p>13 of it that, you know, you should not be using it over a</p> <p>14 certain period of time. And that's why, obviously, we're</p> <p>15 critical of Officer Lopera in this matter.</p> <p>16 Q. When you trained with a rear naked choke or an L</p> <p>17 -- have you ever trained in an LVNR?</p> <p>18 A. We called it an upper body control hold. It's</p> <p>19 the -- the move is identical; we just termed it something</p> <p>20 different.</p> <p>21 Q. You just -- you just don't pay Jim Lindell for</p> <p>22 his copyrighted technique?</p> <p>23 A. That -- that's correct. We surely don't. We --</p> <p>24 we called it a full carotid -- is what LAPD still terms</p> <p>25 it today.</p>	<p>1 the side of the carotid with maximum pressure.</p> <p>2 The placement of the elbow is the same on both</p> <p>3 to allow, obviously, some -- some relief to the trachea</p> <p>4 area and then putting that person, you know, unconscious</p> <p>5 or to stop their behavior.</p> <p>6 Q. So LAPD has an authorized neck restraint in</p> <p>7 which the officer's hand -- he would have one encircling</p> <p>8 arm, and the other hand would be placed on the back of</p> <p>9 the suspect's head?</p> <p>10 A. It would -- back of the head is solely to</p> <p>11 control the head --</p> <p>12 Q. Sure.</p> <p>13 A. -- at that time to make sure that you don't get</p> <p>14 head butted. It's just to control the head, back of the</p> <p>15 neck when you have that -- when you're locked in in</p> <p>16 that -- in that hold.</p> <p>17 Q. Did you see in the video any evidence that Ken</p> <p>18 Lopera either had an LVNR or had a rear naked choke, by</p> <p>19 your definitions?</p> <p>20 A. I couldn't tell.</p> <p>21 Q. You couldn't tell?</p> <p>22 A. I could not.</p> <p>23 Q. Could you tell in the videos or through any</p> <p>24 other evidence that -- how long Ken Lopera was exerting</p> <p>25 pressure on Tashi Farmer's neck?</p>
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<p>1 Q. Is -- is the hand placement the same in the full</p> <p>2 carotid L -- LAPD hold as the LVNR for Metro?</p> <p>3 A. It is. It's clasped to the side. It's the</p> <p>4 same.</p> <p>5 Q. Are there any distinctions?</p> <p>6 A. The full -- the modified is hands clasped. The</p> <p>7 full is similar to what the rear naked choke is; your arm</p> <p>8 comes through to the bicep, you control the head, and you</p> <p>9 apply the -- apply the -- apply the hold.</p> <p>10 Q. I'm sorry, I was following your hands and --</p> <p>11 A. I'm sorry.</p> <p>12 Q. Would you repeat -- no, it -- it's helpful.</p> <p>13 Would you repeat that.</p> <p>14 A. The -- there's two different kinds, or there was</p> <p>15 when I left the Los Angeles Police Department. If</p> <p>16 they've changed that since, I don't know. There was a</p> <p>17 modified carotid and a full. Modified --</p> <p>18 Q. And please explain the modified.</p> <p>19 A. Yeah. Modified is similar to what we have in</p> <p>20 the LVNR here, is that the hands were clasped, maximum</p> <p>21 pressure to the side of the neck. The full, which once</p> <p>22 again, is on the same parallel of lethal force, is used</p> <p>23 similar to what we see in a rear naked choke; the arm</p> <p>24 comes through, grabs on to the bicep, controlling of the</p> <p>25 head, and obviously the same desired effect of depressing</p>	<p>1 A. Pressure, I couldn't tell that.</p> <p>2 Q. Could you tell -- are you aware that there's</p> <p>3 three levels of LVNR in Metro's use of force policy?</p> <p>4 A. There was at the time. I believe there's only</p> <p>5 two now.</p> <p>6 Q. Okay. LVR -- at the time LVNR 1, 2 and 3, are</p> <p>7 you familiar with those?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know the differences between LVNR 1, 2,</p> <p>10 and 3?</p> <p>11 A. I don't.</p> <p>12 Q. Okay. Have you reviewed the testimony of</p> <p>13 Sergeant Michael Bland?</p> <p>14 A. I have.</p> <p>15 Q. And do you know what his position was and why</p> <p>16 he's been test -- or why he has been deposed in this</p> <p>17 case?</p> <p>18 A. He's a PMK for force.</p> <p>19 Q. Okay.</p> <p>20 A. For LVM.</p> <p>21 Q. I'm sorry?</p> <p>22 A. For Las Vegas Metro.</p> <p>23 Q. Okay. Have you ever met Officer Bland?</p> <p>24 A. I have not.</p> <p>25 Q. Actually, have you met any of the officers</p>

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<p>1 involved any -- in any of this, whether they're</p> <p>2 percipient witnesses, whether they were actually</p> <p>3 involved? You don't know any of the Metro officers in</p> <p>4 this case?</p> <p>5 A. Just the -- I -- I met the chief. That's --</p> <p>6 that's it.</p> <p>7 Q. McGrath?</p> <p>8 A. No. Lombardo.</p> <p>9 Q. Oh, the sheriff?</p> <p>10 A. Yes, sheriff. Pardon me.</p> <p>11 Q. Did you talk to him about the case?</p> <p>12 A. No. I haven't spoke to him since we took a trip</p> <p>13 a few years back.</p> <p>14 Q. So your last communication with him was prior to</p> <p>15 the incidents we're talking about in May of 2017?</p> <p>16 A. Yes. I haven't spoke to him in probably eight</p> <p>17 or nine years.</p> <p>18 Q. Okay. Sergeant Michael Bland is -- have you</p> <p>19 reviewed his qualifications to be the PMK for Las Vegas</p> <p>20 Metro?</p> <p>21 A. I may have. I didn't -- I didn't look at his</p> <p>22 qualifications. I may have.</p> <p>23 Q. Do you -- would -- well, based on that, he's a</p> <p>24 fourth degree Brazilian jiu-jitsu practitioner. Would --</p> <p>25 what -- my question is are you more qualified to opine on</p>	<p>1 was being utilized by Officer Lopera.</p> <p>2 Do you remember that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you disagree with his testimony?</p> <p>5 A. Once again, I don't know. I -- I made my own</p> <p>6 determination. I don't know, based on -- I -- my</p> <p>7 reviewing of the video, if it was a rear naked choke or</p> <p>8 an LVNR.</p> <p>9 Q. If you were arguing with either Sergeant</p> <p>10 Crumrine or Officer Lopera to try to convince them that</p> <p>11 what you saw was something different than an LVNR, what</p> <p>12 would you say?</p> <p>13 A. I wouldn't argue with them over that. I wasn't</p> <p>14 there.</p> <p>15 Q. Okay. And so you would believe their testimony</p> <p>16 that what they saw was an LVNR?</p> <p>17 A. No, unless I could discern from either the video</p> <p>18 or through the training, once again, the training that</p> <p>19 will come from Las Vegas Metro to, i.e., Sergeant Bland,</p> <p>20 the PMK. Obviously, he's going to be much more</p> <p>21 conversant in that hold because he's trained his staff on</p> <p>22 that.</p> <p>23 So if there's a variation or deviation of that</p> <p>24 LVNR, now it's a -- what he would consider to be a rear</p> <p>25 naked choke, he would be better suited to -- to give that</p>
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<p>1 things related to the LVNR and the RNC, or would Sergeant</p> <p>2 Bland be?</p> <p>3 A. I'm significantly less qualified than he is.</p> <p>4 Q. As a practitioner of the things?</p> <p>5 A. As it relates to the -- obviously, Brazilian</p> <p>6 jiu-jitsu and ultimately holds. He's a fourth degree</p> <p>7 black belt. I'm -- my background doesn't -- it pales in</p> <p>8 comparison to that.</p> <p>9 Q. Okay. Was there anything in Sergeant Bland's</p> <p>10 testimony that sticks out to you that you -- you remember</p> <p>11 disagreeing with?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 A. Not that I recall.</p> <p>15 Q. You've reviewed the FIT transcript or FIT</p> <p>16 statement for Officer Flores?</p> <p>17 A. I have.</p> <p>18 Q. And have you reviewed the CIRT transcript for</p> <p>19 Officer Flores?</p> <p>20 A. I have.</p> <p>21 Q. And have you reviewed the deposition transcript</p> <p>22 for Officer Flores?</p> <p>23 A. I have.</p> <p>24 Q. And Officer Flores testified in all three of</p> <p>25 those transcripts that he believed it was an LVNR that</p>	<p>1 testimony.</p> <p>2 Q. If -- do you have an opinion as to whether or</p> <p>3 not -- if an officer is intending to use an LVNR but, for</p> <p>4 whatever reason, they can not complete the hand clasp, so</p> <p>5 they've got the encircling arm, they've got the larynx or</p> <p>6 the throat protected in the elbow area, but that, for</p> <p>7 whatever reason, they simply cannot get the hands clasped</p> <p>8 together, in your opinion, are they still employing an</p> <p>9 LVNR, or is it not an LVNR?</p> <p>10 MR. SAYRE: Objection. Incomplete hypothetical.</p> <p>11 Q. You can answer.</p> <p>12 A. It depends.</p> <p>13 Q. On what?</p> <p>14 A. It depends on where the arms are positioned. It</p> <p>15 depends on if the hold is actually -- if he's acquired</p> <p>16 appropriate hold.</p> <p>17 Q. So assume that the -- there's no problem with</p> <p>18 the encircling arm. Let's assume that there's an</p> <p>19 allegation that the officer, a Metro officer, not an LAPD</p> <p>20 officer, has -- instead of his hand clasped, he has a</p> <p>21 hand on the back of the suspect's head.</p> <p>22 Does that, by default, make it not an LVNR?</p> <p>23 A. It would still make it -- according to the</p> <p>24 policies that I -- it would still -- the attempt to try,</p> <p>25 that you tried to use it, it's almost like the parallel,</p>

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<p>1 the use of deadly force of shooting your gun, if you</p> <p>2 don't hit anyone, it's still the use of deadly force.</p> <p>3 It's the same that -- a deadly force application was</p> <p>4 applied at that time. The effectiveness is not related</p> <p>5 to how it would be investigated.</p> <p>6 Q. Okay. Have you seen the transcripts of the</p> <p>7 security guards at the Venetian?</p> <p>8 A. I have.</p> <p>9 Q. And do you recall them discussing the resistance</p> <p>10 level of Mr. Farmer?</p> <p>11 A. Which -- which --</p> <p>12 Q. For -- for example, Security Officer Infantino</p> <p>13 discussed how strong Tashi Farmer was and that he</p> <p>14 believed that he was on something to be that strong.</p> <p>15 Do you recall that?</p> <p>16 A. Let me refresh my notes. I -- I don't recall if</p> <p>17 he did or he didn't. I don't recall if he -- if he</p> <p>18 actually said that or not.</p> <p>19 Q. Okay. Do you recall seeing in anything in the</p> <p>20 videos you reviewed or any other evidence that would --</p> <p>21 that you would point to to disagree or to undermine his</p> <p>22 testimony?</p> <p>23 MR. SAYRE: I'm sorry, vague and ambiguous as to</p> <p>24 what you mean by "his testimony."</p> <p>25 Q. Do you understand my question?</p>	<p>1 A. Probably just walk the route, if I can, if I can</p> <p>2 get access to walk that route from where the initial</p> <p>3 encounter, consensual encounter, happened up and to the</p> <p>4 point where he was initially tased.</p> <p>5 Q. Does it matter to you to walk through the</p> <p>6 employee area only where Officer Lopera was simply</p> <p>7 pursuing Mr. Farmer and there was no interaction between</p> <p>8 the two, or are you -- are you talking about where they</p> <p>9 exited the Venetian and pursued into the street?</p> <p>10 A. No, all of it. Just because of -- of him going</p> <p>11 down the stairs after falling down, you know, on the</p> <p>12 water. I'd like to be able to get access to all of it if</p> <p>13 I could.</p> <p>14 Q. Okay. What would that do to inform your</p> <p>15 opinion?</p> <p>16 A. Just really give me an idea of the duration of</p> <p>17 the -- of the foot pursuit, the distance. It's better to</p> <p>18 get, you know, obviously, eyes on it rather than see</p> <p>19 it -- you know, you can only see so much on video. The</p> <p>20 initial, obviously, confrontation, you don't -- doesn't</p> <p>21 pick up again, so I'd like to know the distance of -- and</p> <p>22 I'd also like to know where Officer Lif went when she had</p> <p>23 left and why she didn't -- where she went from there</p> <p>24 that -- that ultimately allowed her to show up after the</p> <p>25 event at that time. So I'd like to see her route of</p>
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<p>1 A. At what point?</p> <p>2 Q. Well, he -- at the point that he was involved.</p> <p>3 He said -- do you recall that Officer Infantino -- and</p> <p>4 when I say "officer" there, Security Guard Infantino --</p> <p>5 attempted to assist Officer Lopera?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And do you remember him talking about</p> <p>8 attempting to grab Officer -- excuse me, Tashi Farmer's</p> <p>9 left arm?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. Do you remember him discussing that he could not</p> <p>12 control Tashi Farmer's left arm?</p> <p>13 A. I don't recall if he testified to that or not.</p> <p>14 Q. Okay. Have you been to the Venetian to review</p> <p>15 the scene where this incident took place?</p> <p>16 A. As of now, no.</p> <p>17 Q. Okay. So you haven't been inside or to the</p> <p>18 outside area where the --</p> <p>19 A. As of today --</p> <p>20 Q. -- struggle took place?</p> <p>21 A. I have not, as of today.</p> <p>22 Q. Okay. Do you intend to go?</p> <p>23 A. I most likely will -- if we go to trial.</p> <p>24 Q. You'll -- so what will you do when you go to the</p> <p>25 Venetian?</p>	<p>1 travel as well.</p> <p>2 Q. Do you have an opinion on what her route of</p> <p>3 travel was?</p> <p>4 A. I don't know. I know she didn't follow them</p> <p>5 down the hallway, I believe.</p> <p>6 Q. Same general questions, you've reviewed officer</p> <p>7 Tran's FIT transcript, CIRT transcript, and depo tran --</p> <p>8 depo transcript; correct?</p> <p>9 A. That's right.</p> <p>10 Q. Do you have any different opinion than you gave</p> <p>11 related to Officers Flores and Crumrine regarding his</p> <p>12 observations, that he believed it was a LVNR that Officer</p> <p>13 Lopera was employing?</p> <p>14 A. I don't have any difference of opinions, no.</p> <p>15 Q. Are you familiar with Security Guard Vibas or</p> <p>16 Vibas? I'm not sure how we pronounce it.</p> <p>17 A. I'm -- I read his interview.</p> <p>18 Q. Okay. Do you have an opinion as to whether</p> <p>19 Officer Lopera was in or out of policy when he gave</p> <p>20 verbal warnings to Tashi Farmer?</p> <p>21 A. At what point?</p> <p>22 Q. At any point.</p> <p>23 A. Prior to the -- are you talking about</p> <p>24 specifically prior to the tasing?</p> <p>25 Q. I'll take it anywhere you want to go.</p>

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<p>1 A. If he was going to be using the Taser, then he</p> <p>2 should give a warning, obviously, when feasible.</p> <p>3 Q. Did he?</p> <p>4 A. I've heard -- I've read two different -- I've</p> <p>5 heard that, "I'm going to tase you" and then I heard,</p> <p>6 "Taser, Taser, Taser." There's been two different</p> <p>7 versions of what I've read.</p> <p>8 Q. And, I'm sorry, where did you read that?</p> <p>9 A. Somewhere within the record.</p> <p>10 Q. Did you hear that on the videos you watched?</p> <p>11 A. I heard the, "Taser, Taser, Taser," I believe,</p> <p>12 in the -- in the video.</p> <p>13 Q. You never heard him tell Tashi Farmer to stop?</p> <p>14 A. Yes. I heard that.</p> <p>15 Q. Before he said, "Stop or I'm going to tase you,"</p> <p>16 you don't recall hearing that?</p> <p>17 A. I believe I did, yes.</p> <p>18 Q. Okay. So is that a warning that would comply</p> <p>19 with Metro's policies and procedures?</p> <p>20 A. If the force is deemed reasonable, but to warn</p> <p>21 someone prior to using force that may not be reasonable,</p> <p>22 a warning wouldn't be necessary.</p> <p>23 Q. Well, isn't a warning just that? If there was</p> <p>24 compliance to the warning, we never get to the force</p> <p>25 equation, do we?</p>	<p>1 Q. Okay. So back to the -- the simple question of</p> <p>2 whether or not -- based on your review and listening to</p> <p>3 the audios, is it your opinion that Ken Lopera did, in</p> <p>4 fact, give the appropriate warning to Tashi Farmer, or do</p> <p>5 you disagree with that?</p> <p>6 A. If he was going to use force, yeah. He did, in</p> <p>7 fact, give a warning. The question is is the force</p> <p>8 reasonable?</p> <p>9 Q. Fair. And obviously, your opinion on whether</p> <p>10 the force is reasonable is what?</p> <p>11 A. Which force?</p> <p>12 Q. The Taser.</p> <p>13 A. I believe the Taser is unreasonable.</p> <p>14 Q. Why?</p> <p>15 A. Because there's no aggressive act of resistance</p> <p>16 at that time. You're simply fleeing. He had not</p> <p>17 committed a crime. He didn't need to stop. It was a</p> <p>18 consensual encounter.</p> <p>19 I don't see the connection of the reasonable</p> <p>20 suspicion that he had done anything unless Officer</p> <p>21 Lopera -- ultimately purview for the jury -- could</p> <p>22 articulate that -- and once again, I've not read his</p> <p>23 statement because there hasn't been any -- that he could</p> <p>24 articulate that he reasonably believed that Mr. Farmer</p> <p>25 was going to carjack the white vehicle.</p>
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<p>1 A. But if the force in itself even with a warning</p> <p>2 is deemed objectionably unreasonable, then there's no</p> <p>3 need to warn.</p> <p>4 Q. That's circular. So take the force out of the</p> <p>5 equation. If I warn you as a suspect that, "Stop or I'm</p> <p>6 going to tase you" and the suspect complies by stopping,</p> <p>7 we never get to the force question, do we?</p> <p>8 A. Hopefully not.</p> <p>9 Q. Well, I mean, I don't understand the adverb.</p> <p>10 Hopefully or not hopefully, if the suspect complies with</p> <p>11 verbal commands, then the officer doesn't have to use any</p> <p>12 further force at that time; correct?</p> <p>13 A. Hopefully not. I -- once again, I've seen,</p> <p>14 investigated, worked on matters where even when people</p> <p>15 were verbally -- they were compliant, force was still</p> <p>16 used, so...</p> <p>17 Q. Okay. And verbally compliant -- and let me add</p> <p>18 that they were physically compliant because I don't want</p> <p>19 to get into the discussion we had earlier, which was a</p> <p>20 good distinction, regarding someone's words versus their</p> <p>21 actions.</p> <p>22 So if somebody physically complies with your</p> <p>23 commands as an officer, do you still at that point get to</p> <p>24 the use of force equation?</p> <p>25 A. Hopefully not.</p>	<p>1 At that point, he could use the Taser. Other</p> <p>2 than that, the initial deployment of the Taser would be</p> <p>3 deemed unreasonable.</p> <p>4 Q. Okay. You just said in that narrative that</p> <p>5 Officer -- or excuse me, that Tashi Farmer had not</p> <p>6 committed a crime.</p> <p>7 A. That's correct.</p> <p>8 Q. My first two questions today, you told me that</p> <p>9 trespassing was a crime in Nevada and California, and you</p> <p>10 told me that being under the influence of</p> <p>11 methamphetamines was a crime in Nevada and California.</p> <p>12 So how is it you sit here now and say that Tashi</p> <p>13 Farmer had not committed a crime?</p> <p>14 A. You didn't ask me if Tashi Farmer committed a</p> <p>15 crime. You asked me was that, in itself, a crime, and I</p> <p>16 answered yes.</p> <p>17 Q. Okay. Tashi -- and Tashi Farmer ran into a</p> <p>18 employee area only which is not authorized for civilian</p> <p>19 access or customer access.</p> <p>20 So does that not qualify as a trespass in your</p> <p>21 view of the law?</p> <p>22 A. Well, that trespass would have to be affected by</p> <p>23 the owner of the Venetian at that time to say that they</p> <p>24 warned that person not to be there and obviously have the</p> <p>25 Las Vegas Metro effect that arrest for trespassing.</p>

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<p>1 Q. Now, I --</p> <p>2 MR. SAYRE: Wait. He's not through.</p> <p>3 MR. McNUTT: Easy, Fred. I just was saying I'm</p> <p>4 sorry, I didn't realize he was not finished.</p> <p>5 Q. Carry on.</p> <p>6 A. As -- as it relates to the actual -- I lost my</p> <p>7 train of thought. Can you repeat the question.</p> <p>8 Q. We can read it back.</p> <p>9 A. Sure.</p> <p>10 (Record read.)</p> <p>11 A. Yeah. Only, once again, if -- if you warn</p> <p>12 someone, typically, that you're trespassing and then,</p> <p>13 obviously, they don't comply with that warning. The fact</p> <p>14 that he entered that location -- and what was the purpose</p> <p>15 of trespassing? Was it to simply leave? Could he have</p> <p>16 deemed that it was an exit outside of the building? I</p> <p>17 don't know that at the time.</p> <p>18 So maybe he could have detained him with a</p> <p>19 warning for trespassing. Maybe he could have stopped</p> <p>20 him, but ultimately the -- my understanding would be the</p> <p>21 Venetian would have to, obviously, effect that arrest for</p> <p>22 trespassing.</p> <p>23 Q. And you're saying that under Nevada law, Officer</p> <p>24 Lopera could not have arrested him for trespass?</p> <p>25 A. He'd have to deem that that area is, in fact, an</p>	<p>1 being under the influence if they just saw them for a</p> <p>2 brief couple of seconds and then they ran?" And I said,</p> <p>3 "No, they could not."</p> <p>4 So at that point there would be no way for</p> <p>5 Officer Lopera to know, in fact, that Mr. Farmer was</p> <p>6 under the influence of methamphetamine during that</p> <p>7 initial reaction based on your question.</p> <p>8 Q. Are you done not answering my question?</p> <p>9 MR. SAYRE: You know, why don't you be --</p> <p>10 instead of being argumentative, why don't you be polite</p> <p>11 and ask him another question.</p> <p>12 MR. McNUTT: Mr. Sayre, I appreciate your</p> <p>13 running dialogue, but actually I don't.</p> <p>14 Q. So when you testified earlier that being under</p> <p>15 the influence of illegal methamphetamines was a crime, do</p> <p>16 you stand by that testimony?</p> <p>17 A. If you can make that determination.</p> <p>18 Q. No, sir. Is that fact a crime under Nevada law?</p> <p>19 A. If it's determined that you're under the</p> <p>20 influence, that's a crime.</p> <p>21 Q. Okay. Are you familiar with Nevada law on that</p> <p>22 point?</p> <p>23 A. I believe I am, yes.</p> <p>24 Q. What chapter just generally governs that?</p> <p>25 A. I don't know.</p>
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<p>1 area that, by going in that area, would -- he would</p> <p>2 actually be breaking the law by trespassing.</p> <p>3 Q. I noticed that the Nevada Revised Statutes were</p> <p>4 not part of what you reviewed for this expert report. Is</p> <p>5 there a reason for that?</p> <p>6 A. No.</p> <p>7 Q. Did you review the Nevada Revised Statutes?</p> <p>8 A. I believe I did.</p> <p>9 Q. So are you familiar with what statute covers</p> <p>10 trespass?</p> <p>11 A. I'm not.</p> <p>12 Q. How about the general chapter?</p> <p>13 A. No.</p> <p>14 Q. Okay. You testified that being under the</p> <p>15 influence of illegal narcotics, in this case,</p> <p>16 methamphetamines, was a crime. Remember that?</p> <p>17 A. It is.</p> <p>18 Q. Okay. And we now know, as you testified, that</p> <p>19 you've seen evidence that Officer -- or excuse me, Tashi</p> <p>20 Farmer was, in fact, under the influence of</p> <p>21 methamphetamines. Remember that?</p> <p>22 A. But I also remember that your question was --</p> <p>23 Q. Yeah. I know. That was a yes or no.</p> <p>24 A. -- was within a five-second rule. You said,</p> <p>25 "Could someone determine someone's mental illness or</p>	<p>1 Q. Okay. Now, you then testified that you were</p> <p>2 aware that Tashi Farmer was, in fact, under the influence</p> <p>3 of methamphetamines. Remember that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So now let's fast forward. At the time</p> <p>6 that Officer Lopera and Tashi Farmer exited the Venetian,</p> <p>7 isn't it true that Officer Lopera's instincts and</p> <p>8 reactions and physical cues that Off -- that Tashi Farmer</p> <p>9 was under the influence were, in fact, true, we now know</p> <p>10 that; right?</p> <p>11 A. It's facts known at the time, and there's no way</p> <p>12 that -- for -- for Officer Lopera to know at that time</p> <p>13 that, in fact, Mr. Farmer was under the influence of</p> <p>14 anything, if he was -- maybe he was behaving that way</p> <p>15 because he was off psychotropic medication. Maybe he was</p> <p>16 mentally ill.</p> <p>17 Maybe there's a number of things, but he didn't</p> <p>18 know until the -- we didn't know; all of us didn't know</p> <p>19 until the toxicology came back, so there would be no way</p> <p>20 for Mr. -- Officer Lopera, pardon me, to be able to know</p> <p>21 at the time, especially during that couple brief seconds</p> <p>22 before he ran down the hallway.</p> <p>23 Q. Does Officer -- so I believe you're confusing</p> <p>24 two standards, so I'll break it down.</p> <p>25 Does Officer Lopera have to know with certainty?</p>

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<p>1 Because you testified earlier that reasonable suspicion</p> <p>2 was not 100 percent certain. So Officer Lopera -- we all</p> <p>3 heard it -- he thought he was on drugs. As it turned</p> <p>4 out, he was correct; isn't that true?</p> <p>5 A. He was correct, based on the toxicology.</p> <p>6 Q. So he pursued Tashi Farmer, based upon his</p> <p>7 police belief that he was under the influence and that,</p> <p>8 in fact, turned out to be a crime.</p> <p>9 MR. SAYRE: Objection. Assumes a fact not in</p> <p>10 evidence, that he pursued him on that basis.</p> <p>11 Q. You can answer the question.</p> <p>12 A. All I know is that the toxicology revealed that</p> <p>13 Mr. Farmer was under the influence of methamphetamine at</p> <p>14 the time of his death.</p> <p>15 Q. So do you stand by the prior testimony that at</p> <p>16 the time, just prior to the deployment of the Taser, that</p> <p>17 Tashi Farmer had not, in fact, committed two crimes, one</p> <p>18 of trespass and one of being under the influence of</p> <p>19 illegal narcotics?</p> <p>20 A. Yes.</p> <p>21 Q. Even though you know he, in fact, entered an</p> <p>22 employee-only area that was -- he was not authorized to</p> <p>23 enter and you now know that he was under the influence of</p> <p>24 illegal narcotics, you say that, today, he had not</p> <p>25 committed a crime.</p>	<p>1 drug and have it both ways. You need to consider all --</p> <p>2 all issues at that time.</p> <p>3 Q. You testified on my third question that, even if</p> <p>4 he was -- Tashi Farmer was not under the influence of</p> <p>5 drugs and he was simply mentally ill, that Officer Lopera</p> <p>6 had reasonable suspicion to pursue him?</p> <p>7 A. I'm perfectly fine with the pursuit.</p> <p>8 Q. Okay. So -- and then do you just discard the</p> <p>9 fact when we get to the use of force of what the officer</p> <p>10 believed at the time?</p> <p>11 A. Well, the reasonable of the -- the</p> <p>12 reasonableness of the force can be based on what he did.</p> <p>13 The fact that he ran down the hall and out the building,</p> <p>14 that -- that behavior in itself, based on Las Vegas Metro</p> <p>15 policy, is not aggressive behavior that's going to</p> <p>16 warrant the use of a Taser, based on their own policy.</p> <p>17 So based on their own policy, it states that you</p> <p>18 have to be able to articulate that the subject has the</p> <p>19 intent to cause you harm, someone else, or themselves and</p> <p>20 the use of the ECD is reasonable. And that's Las Vegas</p> <p>21 Metro PD 1020.</p> <p>22 So at the time of the use of Tasers, what's</p> <p>23 important -- I'm perfectly fine with the running after</p> <p>24 him, not knowing where he's going, what he's doing. Is</p> <p>25 he mentally ill? Is he under the influence? And to</p>
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<p>1 MR. SAYRE: Objection. Argumentative.</p> <p>2 A. Right, because it's facts the officers know at</p> <p>3 the time when the force was used.</p> <p>4 Q. To justify what, the use of force or reasonable</p> <p>5 suspicion?</p> <p>6 A. Both.</p> <p>7 Q. You think that the facts the officer knew at the</p> <p>8 time go to all of it?</p> <p>9 A. Well, it has -- it's part of it. I mean, if</p> <p>10 you've not committed a crime, the reasonableness of the</p> <p>11 force, it could be based on what transpired prior to the</p> <p>12 use of force. Within that officer's decisions to use</p> <p>13 force are going to be predicated on what they knew at the</p> <p>14 time.</p> <p>15 Q. And at the time, Officer Lopera believed that he</p> <p>16 was under the influence and he was trespassing. Is that</p> <p>17 not sufficient to pursue Tashi Farmer?</p> <p>18 MR. SAYRE: Objection.</p> <p>19 Q. You said earlier it was.</p> <p>20 MR. SAYRE: Assumes facts not in evidence.</p> <p>21 A. If he reasonably believed, but based on the --</p> <p>22 the hypothetical that you posed that within a few</p> <p>23 seconds -- you just can't have it both ways. You can't</p> <p>24 not understand that he's possibly mentally ill and -- but</p> <p>25 only differentiate that he's under the influence of a</p>	<p>1 follow him, I think was reasonable. When he ran out the</p> <p>2 building, at that point you don't really -- you don't</p> <p>3 have a crime at that point.</p> <p>4 Q. That's your opinion. But let's assume that the</p> <p>5 officer believed that those two crimes had occurred. And</p> <p>6 now the officer is pursuing Tashi Farmer outside the</p> <p>7 building and he further believes that carjacking is about</p> <p>8 to occur.</p> <p>9 So with those three sequences of crimes, do you</p> <p>10 think that amounts to any use of force to detain the</p> <p>11 suspect?</p> <p>12 A. Well, if he reasonably believes that someone is</p> <p>13 being carjacked, if that's his reasonable belief at the</p> <p>14 time of the force, then that would be reasonable.</p> <p>15 Q. Okay. And he could articulate that and we would</p> <p>16 go about our business; right?</p> <p>17 A. And a judge or jury can determine that that was</p> <p>18 reasonable, based on the set of facts, and that would be</p> <p>19 reasonable.</p> <p>20 Q. And your opinion is that it was reasonable?</p> <p>21 A. If he reasonably believes that that -- that</p> <p>22 car -- that he was being -- someone was being carjacked,</p> <p>23 in conjunction with the other things that you mentioned,</p> <p>24 obviously, under the influence and running, if he</p> <p>25 reasonably believes that, then that use of the Taser may</p>

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<p>1 be appropriate.</p> <p>2 Q. Do you think there's any evidence or facts in</p> <p>3 this case that you reviewed that would indicate that his</p> <p>4 perception was not reasonable, "his" being Ken Lopera?</p> <p>5 A. I can't speak to his perception.</p> <p>6 Q. Okay. Do you think there's any objective facts</p> <p>7 that you reviewed in this case that indicate that force</p> <p>8 was not warranted, based upon the sequence of events</p> <p>9 we've just discussed?</p> <p>10 A. Well, witnesses, including Pierce, stated that</p> <p>11 he didn't reasonably believe that he was trying to get</p> <p>12 into his truck. He didn't feel he was going to be a</p> <p>13 victim of a carjacking based on Mr. Farmer's actions. I</p> <p>14 think that would be important. I think that's credible</p> <p>15 because he is, in fact -- was in the truck at the time</p> <p>16 when Mr. Farmer approached, prior to the initial tasing.</p> <p>17 So I think he's a very important part of this</p> <p>18 because he was there. It was his vehicle that was</p> <p>19 ultimately -- was potentially going to be carjacked, if</p> <p>20 you go with what Officer Lopera was saying. So I think</p> <p>21 that he's in a better position than I am, based on those</p> <p>22 actions, to make that determination.</p> <p>23 Q. Did Mr. Pierce lock his doors?</p> <p>24 A. He did.</p> <p>25 Q. When Tashi Farmer approached?</p>	<p>1 may have been -- he saw commotion or -- behind him and</p> <p>2 took appropriate action and -- and locked the door. The</p> <p>3 locking of the door doesn't mean he reasonably believed</p> <p>4 he was going to be carjacked. He was just fearful and</p> <p>5 had a concern, so he locked his door.</p> <p>6 Q. Goes to his state of mind about what he thought</p> <p>7 was going to happen, though; correct?</p> <p>8 A. It could.</p> <p>9 Q. Okay. So you give Pierce's testimony a lot of</p> <p>10 weight in this case?</p> <p>11 A. I give all of the statements I've read -- Pierce</p> <p>12 specifically, because he didn't reasonably believe that</p> <p>13 he was being carjacked at the time, which was kind of the</p> <p>14 onset of this -- the series of events. So I think that</p> <p>15 was important because he was in the vehicle at the time.</p> <p>16 So I think that was -- I think that was important.</p> <p>17 Q. Are you familiar with the US Supreme Court</p> <p>18 precedent regarding use of force and the standards?</p> <p>19 A. The Graham v. Connor?</p> <p>20 Q. Amongst others.</p> <p>21 A. Yes.</p> <p>22 Q. Is it your opinion that cops have to deploy</p> <p>23 force perfectly each and every time?</p> <p>24 A. The standards objective -- the objective</p> <p>25 reasonable standard.</p>
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<p>1 A. Yes.</p> <p>2 Q. Why?</p> <p>3 A. He was probably concerned.</p> <p>4 Q. Do you recall him using the word "fear," he was</p> <p>5 fearful in his interview?</p> <p>6 A. I do recall that.</p> <p>7 Q. Okay. When someone's fearful, are they fearful</p> <p>8 of, you know, positive actions happening to them, or are</p> <p>9 they fearful of a crime?</p> <p>10 MR. SAYRE: Objection. Vague. Ambiguous.</p> <p>11 A. Well --</p> <p>12 Q. What do you think he was fearful of?</p> <p>13 A. Well, I worked in -- when I would leave the</p> <p>14 station in, say, 77th division, I would -- when I'd get</p> <p>15 to a stoplight in South Central LA, I would lock my</p> <p>16 doors, and by the mere fact of where I was -- where I was</p> <p>17 at. I live in Huntington Beach; I don't lock my doors.</p> <p>18 So it depends on -- when I'm in my car, it</p> <p>19 depends on where you're at. And that level of fear could</p> <p>20 be based on whatever's happening at the time. You see</p> <p>21 someone running up behind you and you lock your doors.</p> <p>22 Q. Do you think that the parking area, valet</p> <p>23 security area outside the Venetian is equivalent to the</p> <p>24 77th division you just referenced?</p> <p>25 A. I don't, but I also -- to speak on the fear, he</p>	<p>1 Q. Yeah. And what does that mean to you in this</p> <p>2 scenario? What do you think Ken Lopera should have done?</p> <p>3 A. At what point?</p> <p>4 Q. At any point.</p> <p>5 A. I think that once Mr. Farmer ran out -- Farmer</p> <p>6 ran out of the building, he should have just let him go.</p> <p>7 Q. To where?</p> <p>8 A. Wherever he went.</p> <p>9 Q. Just off, someone else's problem at this point?</p> <p>10 A. Wherever he went. People run -- run all the</p> <p>11 time, and the reason why they run, we don't know. You</p> <p>12 don't have a crime to stop him at that time unless, once</p> <p>13 again, you can articulate that you believe that he was</p> <p>14 carjacking that white truck. Other than that, you just</p> <p>15 let him go.</p> <p>16 Q. Do you know what Project -- or Operation Safe</p> <p>17 Strip is in Las Vegas?</p> <p>18 A. It's what they were assigned to that night.</p> <p>19 Q. But do you know what it is?</p> <p>20 A. I think it deals with transients and drug --</p> <p>21 drug sales, and -- and they work in conjunction with the</p> <p>22 hotels on providing, you know, force protection and high</p> <p>23 visibility and -- and quality-of-life issues and crime</p> <p>24 and things such as that.</p> <p>25 Q. It's a dedicated task force to protect the</p>

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<p>1 tourism of the Strip; is that fair?</p> <p>2 A. That sounds fair.</p> <p>3 Q. Okay. Do you think an officer assigned to</p> <p>4 Operation Safe Strip is supposed to let somebody else's</p> <p>5 problem, when he thinks he's committed crimes -- whether</p> <p>6 you find that reasonable or not, do you think it's -- he</p> <p>7 should let that individual go and just kick him down --</p> <p>8 kick that can down the road, so to speak?</p> <p>9 A. You got to look at the seriousness of the</p> <p>10 offense, what happened at the time, what happened that's</p> <p>11 going to cause you to articulate the reason to use force</p> <p>12 at the time. What -- what transpired? What you had is</p> <p>13 you had a guy run down a hallway and outside of a</p> <p>14 building.</p> <p>15 Q. That's on drugs.</p> <p>16 A. Once again, facts known at the time. That</p> <p>17 determination is not made at that time. You could</p> <p>18 reasonably believe, but we don't run after everybody</p> <p>19 that's on drugs in downtown Vegas or in downtown</p> <p>20 anywhere, because you'd be running the entire day,</p> <p>21 because a good part of the population, unfortunately, is</p> <p>22 under the influence.</p> <p>23 Q. So do arrests occur because of what the officer</p> <p>24 thinks he knew when he initiated the response, or do</p> <p>25 arrests occur because of the totality of information that</p>	<p>1 the fact in itself is not going to justify use of force.</p> <p>2 MR. SAYRE: Can we take a break, please.</p> <p>3 MR. McNUTT: In a few minutes unless it's an</p> <p>4 emergency.</p> <p>5 MR. SAYRE: Well, pretty soon.</p> <p>6 MR. McNUTT: Fred, I acquiesce to your age.</p> <p>7 MR. SAYRE: Thank you.</p> <p>8 THE VIDEOGRAPHER: The time is approximately</p> <p>9 12:07 p.m. We are going off the record.</p> <p>10 (Whereupon, a recess was taken at this time.)</p> <p>11 THE VIDEOGRAPHER: The time is 12:13 p.m. We</p> <p>12 are back on the record.</p> <p>13 BY MR. McNUTT:</p> <p>14 Q. Mr. DeFoe, we're back on the record. Are you</p> <p>15 ready to go?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Let's talk globally for a minute. Do you</p> <p>18 care whether the choke is -- the neck restraint that was</p> <p>19 used was a rear naked choke or an LVNR, in your opinion?</p> <p>20 A. I think it's important for officers to follow</p> <p>21 policy of their department. I think it's important that</p> <p>22 they follow their training. I think as long as they --</p> <p>23 there shouldn't be a departure from training, if that</p> <p>24 training, in fact, was given. I think that's important</p> <p>25 that we don't deviate a whole lot outside of what we're</p>
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<p>1 he has once he's detained someone, conduct -- maybe</p> <p>2 conducted a search, or gotten more information?</p> <p>3 A. It's based on totality of the circumstances.</p> <p>4 Q. Okay. Because you keep saying -- and I keep</p> <p>5 disagreeing, and I want to bring that to a head so I can</p> <p>6 I understand your position. You keep saying, "What he</p> <p>7 knew at the time" as if to discount his belief that we</p> <p>8 now know is true, that Mr. Farmer was, in fact, under the</p> <p>9 influence of illegal narcotics. And that's what I'm just</p> <p>10 not quite understanding about your criticism of that</p> <p>11 decision cycle.</p> <p>12 Is that -- do you understand my confusion?</p> <p>13 A. We talk about beliefs, we're talking about</p> <p>14 credibility. And I'm not making credibility</p> <p>15 determinations against Officer Lopera for anything that</p> <p>16 he did. I don't make those credibility -- if he believed</p> <p>17 something, and that's his belief system, I'm not going to</p> <p>18 be critical of that. I'm -- I'm not making that</p> <p>19 determination based on what he believed or what he</p> <p>20 thought. I'm solely looking at what he did.</p> <p>21 Q. But if it turns out to be true -- if his belief</p> <p>22 turns out to be true empirically, you kind of got to go</p> <p>23 with what he believed; right?</p> <p>24 A. The fact -- once again, the fact that someone</p> <p>25 who may be under the influence -- that you find out after</p>	<p>1 taught for a number of reasons.</p> <p>2 Q. Okay. Do you think that Officer Lopera deviated</p> <p>3 from his training in this case?</p> <p>4 A. If it's determined that he, in fact, used a rear</p> <p>5 naked choke, then that would be a deviation, as Las Vegas</p> <p>6 does not teach rear naked chokes; they teach LVNRs.</p> <p>7 Q. Okay. But you don't have an opinion, one way or</p> <p>8 another, whether he did attempt to complete an LVNR or</p> <p>9 whether he attempted to use a rear naked choke?</p> <p>10 A. I do not.</p> <p>11 Q. Okay. So other than the policy, you said --</p> <p>12 obviously, you think officers should follow the policy of</p> <p>13 their department. I don't think anyone would argue with</p> <p>14 that.</p> <p>15 Is violation of a policy a crime, or is it an</p> <p>16 administrative problem for the officer?</p> <p>17 A. Administrative problem.</p> <p>18 Q. Okay. Do you --</p> <p>19 A. I mean, it could -- excuse me, it could be a</p> <p>20 crime. I mean, you could -- you violate your pursuit</p> <p>21 policy, you violate your use of force policy and now it</p> <p>22 results in a death or a pursuit policy results in a</p> <p>23 collision, it could -- it could -- it could -- there</p> <p>24 could be criminal liability.</p> <p>25 Q. Have you reviewed evidence in this case or</p>

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<p>1 discovery in this case regarding other officers' use of</p> <p>2 neck restraints that was produced? Do you recall that?</p> <p>3 I don't remember seeing it as one of the documents you</p> <p>4 looked at.</p> <p>5 A. I don't believe so.</p> <p>6 Q. Okay. Are you aware of what the penalty would</p> <p>7 be for using an unauthorized neck restraint in Metro?</p> <p>8 A. I have no idea.</p> <p>9 Q. Okay. Have you reviewed the report of</p> <p>10 Dr. Smock?</p> <p>11 A. I believe I have, yes.</p> <p>12 Q. Do you know who Dr. Smock is? He's plaintiff's</p> <p>13 expert.</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you -- is your opinion -- do you agree</p> <p>16 with Dr. Smock's opinion?</p> <p>17 A. Which opinion?</p> <p>18 Q. Where he opines that a rear naked choke was</p> <p>19 used. Do you think he can tell whether a rear naked</p> <p>20 choke was used versus an LVNR?</p> <p>21 A. I don't know.</p> <p>22 Q. Okay. Based upon your long career as a police</p> <p>23 officer and reviewing or investigating use of force</p> <p>24 incidents, have you ever investigated neck restraints or</p> <p>25 chokeholds, be they by officers or by civilians in</p>	<p>1 autopsy results.</p> <p>2 But I worked a major crimes table, so I worked</p> <p>3 as a detective that handles domestic violence calls and</p> <p>4 follows up -- activities on that, but that's just</p> <p>5 determining if there's probable cause to arrest for</p> <p>6 domestic violence and then, obviously, documenting</p> <p>7 injuries and presenting that information to the district</p> <p>8 attorney or the city attorney for filing.</p> <p>9 Q. Are you familiar with Metro's Taser policy?</p> <p>10 A. Yes.</p> <p>11 Q. What are the circumstances under which a Taser</p> <p>12 could be deployed, can be deployed?</p> <p>13 A. Be able to articulate the subject has intent to</p> <p>14 cause harm to you, someone else, or themselves and that</p> <p>15 the use of the Taser is reasonable.</p> <p>16 Q. If a carjacking were taking place, would an</p> <p>17 officer be authorized to use a Taser?</p> <p>18 A. If an actual carjacking was occurring, do I</p> <p>19 think it's reasonable? I think that would be reasonable.</p> <p>20 Q. Okay. Do you understand Metro's policy</p> <p>21 regarding how many times a Taser can be deployed?</p> <p>22 A. Three times.</p> <p>23 Q. Okay. What happens after three times?</p> <p>24 A. You should transition to another force option.</p> <p>25 Q. Such as?</p>
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<p>1 crimes?</p> <p>2 A. I was assigned to the Rampart Corruption Task</p> <p>3 Force, and part of -- one of my duties there was to look</p> <p>4 at use of force divisions that occurred within a bureau</p> <p>5 at a time. Myself and two or three other sergeants</p> <p>6 looked at force, including all the way up to shootings at</p> <p>7 that time.</p> <p>8 So -- but that was more in a holistic approach.</p> <p>9 We were looking for, obviously, boilerplate language and</p> <p>10 other things that were possibly in those reports, but</p> <p>11 that was the only time, and that was in 1999.</p> <p>12 Q. So little different than what I was looking for.</p> <p>13 As an officer, did you ever investigate domestic violence</p> <p>14 or any other crime where a choke of any sort was used on</p> <p>15 the victim?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And based on your experience and your</p> <p>18 expert opinion, can you determine -- as an officer, not</p> <p>19 as a medical person looking at it after the fact, but as</p> <p>20 an officer, how do you go about investigating the type of</p> <p>21 choke that was used or anything like that?</p> <p>22 A. You're looking for marks. You're looking for</p> <p>23 bruising. I never worked homicide, so you're going to be</p> <p>24 looking for, obviously, you know, hemorrhaging, things</p> <p>25 such as that, that occur -- that's found through the</p>	<p>1 A. Could be an impact weapon. Could be open-hand</p> <p>2 strikes. Could be kicks. Could be pepper spray. It</p> <p>3 could be anything other than the Taser.</p> <p>4 Q. Okay. Is that a hard-and-fast rule, or is that</p> <p>5 a conditional rule by Metro?</p> <p>6 A. It says "unless you can justify."</p> <p>7 Q. Doesn't it say "unless there are exigent</p> <p>8 circumstances"?</p> <p>9 A. Yes.</p> <p>10 Q. What are -- can you define "exigent</p> <p>11 circumstances"?</p> <p>12 A. It states, "Deemed ineffective and another use</p> <p>13 of force option will be considered unless exigent</p> <p>14 circumstances exist." That could be, obviously,</p> <p>15 something where someone's life's in peril. They need to</p> <p>16 use that device as such that by not using it, it could</p> <p>17 create an -- you know, dire circumstances for that</p> <p>18 officer or a citizen or someone else.</p> <p>19 Q. Do you think an officer on the fourth cycling of</p> <p>20 the Taser, if he believes that the Taser had not operated</p> <p>21 properly -- do you think he would be within policy to</p> <p>22 cycle it again?</p> <p>23 A. The policy doesn't state that, doesn't --</p> <p>24 Q. No, I'm asking your opinion.</p> <p>25 A. I think after three applications or 15 seconds</p>

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<p>1 that you should transition because if -- if it worked or</p> <p>2 didn't work, if you achieved neuromuscular incapacitation</p> <p>3 or not, the prolonged use of that Taser, exposure to it,</p> <p>4 it's ineffective for the officer, and it may be,</p> <p>5 obviously, harmful to the -- to the individual. So it's</p> <p>6 time to transition.</p> <p>7 Q. Okay. What do you think Officer Lopera should</p> <p>8 have transitioned to in this case, what use of force?</p> <p>9 A. Well, I don't agree that he should have tased at</p> <p>10 that point, so to concede that he should transition to</p> <p>11 anything --</p> <p>12 Q. I wasn't looking for you to concede anything.</p> <p>13 I'm simply saying since he did, in fact, deploy the</p> <p>14 Taser, and your position is that Metro, after -- policy</p> <p>15 requires after three cycles that he should transition,</p> <p>16 what should he have transitioned to?</p> <p>17 A. Once again, it would be depending upon what the</p> <p>18 person's actions are at the time, on what he's going to</p> <p>19 transition to. If the person is compliant, you</p> <p>20 transition to nothing. If you give that person a command</p> <p>21 and there's a reasonable opportunity to comply, then you</p> <p>22 would effect a handcuffing technique. If the act --</p> <p>23 person's actions were assaultive or aggressive or</p> <p>24 combative, then obviously, you would use the appropriate</p> <p>25 force option to stop that person's actions.</p>	<p>1 Q. The police --</p> <p>2 A. The fact that someone's not compliant is that</p> <p>3 you'd have to reasonably articulate that that person is</p> <p>4 still intending to cause you harm in some way. The fact</p> <p>5 that someone's sitting up could be for a number of</p> <p>6 reasons. They could be drunk. They could be whatever.</p> <p>7 The fact that -- their actions still need to be</p> <p>8 aggressive at that point, and that second or third or</p> <p>9 subsequent tasing cycle needs to be evaluated with each</p> <p>10 subsequent cycle to make sure that that person's actions</p> <p>11 at that time of that subsequent deployment are, in fact,</p> <p>12 aggressive.</p> <p>13 Q. Is there a -- do you have a rule in your mind in</p> <p>14 terms of how long the officer is supposed to assess that</p> <p>15 compliance in terms of time?</p> <p>16 A. Well, it's a reasonable opportunity -- is that,</p> <p>17 once again, it gets into a person's state of mind at the</p> <p>18 time. What are you looking for that person to do? If</p> <p>19 you're looking simply to, obviously, administer pain,</p> <p>20 then that's not going to work.</p> <p>21 If you're telling that person to turn around so</p> <p>22 you can place handcuffs on them -- it just depends on</p> <p>23 what that person's doing at the time in which the Taser's</p> <p>24 applied.</p> <p>25 Q. Have you ever seen personally someone fight</p>
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<p>1 Q. If you deployed a Taser or any officer deploys a</p> <p>2 Taser and the suspect -- after the cycle had concluded,</p> <p>3 the suspect appeared to reach to remove a prong, would</p> <p>4 you feel justified in giving him another cycle?</p> <p>5 A. Well, it depends. If they're going to take the</p> <p>6 prong out, then I would transition to drive stun at that</p> <p>7 point.</p> <p>8 Q. Okay. But if you perceive that they're</p> <p>9 attempting to move it out, but they haven't removed the</p> <p>10 prong, would you be justified or any officer be justified</p> <p>11 in cycling the Taser again?</p> <p>12 A. I think that would be reasonable if the reason</p> <p>13 for the tasing -- using the Taser from the onset was</p> <p>14 reasonable and then you gave that person -- you know, if</p> <p>15 you gave that person a command and -- and a reasonable</p> <p>16 opportunity to comply and they did not, then the</p> <p>17 utilization of the Taser would be appropriate.</p> <p>18 Q. If after tasing an individual one time, they</p> <p>19 were on their back and you told them to -- not to move</p> <p>20 and then they proceeded to sit up, would you be justified</p> <p>21 to give them another Taser?</p> <p>22 A. No.</p> <p>23 Q. Why?</p> <p>24 A. Because it doesn't meet within the parameters of</p> <p>25 what their policy is. The fact that someone's not --</p>	<p>1 through a Taser -- Taser exposure?</p> <p>2 A. Not when NMI is achieved. I've not seen them --</p> <p>3 I've seen -- we call the physiology of the struggle</p> <p>4 where, as a result of being tased during that five-second</p> <p>5 or prolonged duration, that person will flail arms, kick</p> <p>6 their legs, move their body. Officer's perception is</p> <p>7 that they're resisting that force option.</p> <p>8 The reality of it is they're responding to the</p> <p>9 fact that they're being, in fact, tased. And so -- and</p> <p>10 so, once again, more force is applied and the reality of</p> <p>11 it is -- is that this physiology of the struggle is such</p> <p>12 that the person's only responding to that pain threshold</p> <p>13 that they're receiving at the time.</p> <p>14 You see that with K-9 bites. People move around</p> <p>15 and they'll flail. They're not resisting at that point.</p> <p>16 They're simply responding to the fact that they're being</p> <p>17 bitten.</p> <p>18 Q. Is Metro's policy about three uses of the</p> <p>19 Taser -- is that a nationwide policy, or do departments</p> <p>20 have different internal policies and things that they</p> <p>21 allow with respect to a Taser?</p> <p>22 A. That's consistent with -- Taser International</p> <p>23 standards are.</p> <p>24 Q. Okay. And Taser International standards is a</p> <p>25 private company?</p>

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<p>1 A. They're a private company.</p> <p>2 Q. Okay. And so does a police force have to adopt</p> <p>3 those standards?</p> <p>4 A. No, but they're best practices, based on all the</p> <p>5 data that they've received from departments as to what --</p> <p>6 what's going on at that time. And I think that's the</p> <p>7 threshold they've created that most departments follow.</p> <p>8 Q. Are you aware of any departments that don't</p> <p>9 follow that?</p> <p>10 A. I'm not.</p> <p>11 Q. Have you ever worked for Beverly Hills?</p> <p>12 A. I have driven through Beverly Hills; I never</p> <p>13 worked there.</p> <p>14 Q. Okay. So you're not aware of -- of other</p> <p>15 departments in Southern California where you worked that</p> <p>16 have -- have a different policy that simply say as long</p> <p>17 as the officer can articulate the use or the use of</p> <p>18 force, there's no arbitrary number, three, four, five?</p> <p>19 A. I'm not aware of that.</p> <p>20 Q. Okay.</p> <p>21 A. I need to brief -- that question you just asked.</p> <p>22 If there's a reason --</p> <p>23 Q. I'm sorry, you need to re-answer the question?</p> <p>24 A. Yeah. I just want to add something, if I may.</p> <p>25 I think I misspoke. If there's a reason to use a Taser</p>	<p>1 Q. Okay. You just looked at the summary part that</p> <p>2 said "This is how long the Taser was cycled" and things</p> <p>3 of that nature?</p> <p>4 A. And the duration of time between the cycles as</p> <p>5 well.</p> <p>6 Q. Right. Okay. So there's -- there's -- there's</p> <p>7 no point in me handing you the pulse graphs and</p> <p>8 questioning you on those; correct?</p> <p>9 A. That's perfect. No. No, thank you.</p> <p>10 Q. Okay. Generally, is attempting to defeating the</p> <p>11 Taser a legitimate reason to apply an additional cycle?</p> <p>12 A. It depends.</p> <p>13 Q. On what?</p> <p>14 A. It depends on the person's actions at that time.</p> <p>15 And then by "defeating a Taser," I don't understand. Are</p> <p>16 you pulling out a barb, or what -- in what way trying to</p> <p>17 defeat the Taser?</p> <p>18 Q. Or the perception that the individual's able to</p> <p>19 fight through the Taser and so you give them another</p> <p>20 cycle.</p> <p>21 A. Once again, that goes back to what I stated a</p> <p>22 moment ago, is that if that person's reacting to being</p> <p>23 tased, you have to take into consideration that those</p> <p>24 actions, arms flailing, body moving, may be as a result</p> <p>25 of being tased, so you wouldn't continue to tase, because</p>
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<p>1 beyond the three times, you need to articulate why that</p> <p>2 is, and that being the person's actions are aggressive,</p> <p>3 they're combative, they meet the threshold of that</p> <p>4 respective agency's policy that a subsequent -- beyond</p> <p>5 three deployments occurs.</p> <p>6 Q. You don't mention the pulse graphs in your</p> <p>7 report. That's why I asked you about them earlier. You</p> <p>8 said you are qualified to read the pulse graphs; is that</p> <p>9 true?</p> <p>10 A. I believe so. I've looked at pulse graphs. I</p> <p>11 don't know if -- when you would say "qualified," I --</p> <p>12 Q. Well, remember the four instructor levels or</p> <p>13 certification levels of a Taser we talked about?</p> <p>14 A. Right.</p> <p>15 Q. I think they were user and instructor and then</p> <p>16 master and advanced. Do you remember those?</p> <p>17 A. I do, and I think master and advanced are people</p> <p>18 that really delve into the -- the downloading of the</p> <p>19 Taser and that information. I mean, we download the</p> <p>20 Taser as a sergeant after someone deploys it because we</p> <p>21 use it for the force, but we don't really get that</p> <p>22 information other than what you get on the report.</p> <p>23 Q. So if we look at the -- at the -- at the pulse</p> <p>24 graphs, I mean, can you explain them to us or to a jury?</p> <p>25 A. No.</p>	<p>1 you're going to get the same exact result.</p> <p>2 Q. Is an officer being in a fight alone exigent</p> <p>3 circumstances that would justify a force triggering of</p> <p>4 the Taser?</p> <p>5 A. It depends what -- what's going on in that fight</p> <p>6 at the time. Is that person's actions being aggressive</p> <p>7 and/or combative?</p> <p>8 Q. But it could be? I mean, being alone could be</p> <p>9 an exigent circumstance?</p> <p>10 A. Alone in itself, no. It's based on that</p> <p>11 person's behavior at that time. Plenty of officers deal</p> <p>12 with people alone. They drive in L units.</p> <p>13 Q. Alone and -- and needing to use force. Let me</p> <p>14 give you an example. Sergeant Bland testified that it's</p> <p>15 not out of department policy to cycle the Taser four or</p> <p>16 five times if you're an officer alone in a fight without</p> <p>17 any backup and especially if you -- if the individual is</p> <p>18 larger than you and you perceive the transitioning to</p> <p>19 something else would be detrimental.</p> <p>20 Do you disagree with that opinion?</p> <p>21 A. If that person's behavior at that -- the fact</p> <p>22 that they're large or their -- the behavior still has to</p> <p>23 be aggressive and assaultive at that time when you would</p> <p>24 go beyond that third Taser deployment, as I mentioned a</p> <p>25 moment ago.</p>

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<p>1 So the fact that you're by yourself, it doesn't</p> <p>2 mean you can continue to deploy the Taser. The policy is</p> <p>3 such -- it doesn't really differentiate between two</p> <p>4 officers or one. You need to articulate that if you</p> <p>5 needed to use it beyond the three, that the</p> <p>6 reasonableness of -- you would have to articulate that</p> <p>7 there was a reasonable -- there's a necessity to do so.</p> <p>8 Q. Do you have experience, as a police officer, as</p> <p>9 an expert, with any officers who have transitioned from a</p> <p>10 Taser to a higher use of force, meaning a more</p> <p>11 significant use of force such as lethal force with a</p> <p>12 firearm?</p> <p>13 A. Oh, many of -- many of the cases I've taken,</p> <p>14 they involved a Taser and a shooting as well.</p> <p>15 Q. Okay. When an officer transitions from a Taser,</p> <p>16 is there a general next step, meaning there's either --</p> <p>17 he uses a Taser and there's either compliance or he uses</p> <p>18 a Taser if he goes to a more significant use of force.</p> <p>19 What is that more significant use of force?</p> <p>20 A. Well, if it's more significant, it depends on</p> <p>21 what that respective agency's policy is at the time.</p> <p>22 Some agencies look at a Taser on a different threshold</p> <p>23 than they do an impact weapon such as a baton or an ASP.</p> <p>24 So that may be the transition, once again, depending on</p> <p>25 the person's behavior. If they transition to a lethal</p>	<p>1 Q. Your report, you mention that -- and I'm going</p> <p>2 to quote it -- Several law enforcements, e.g., IACP,</p> <p>3 PERF, COP, and DOJ, have established 15 seconds of CEW</p> <p>4 exposure, which we'll refer to as Taser exposure, as a</p> <p>5 significant safety point.</p> <p>6 Do you remember writing that?</p> <p>7 A. Yes.</p> <p>8 Q. Why do you think 15 seconds is a significant</p> <p>9 safety point?</p> <p>10 A. I took that -- I took that directly from the</p> <p>11 material I received from -- from Las Vegas. I took that</p> <p>12 directly from there. It's one of -- one of the</p> <p>13 directives. It's just prolonged exposure.</p> <p>14 I mean, you've got issues, obviously, with --</p> <p>15 with -- depends on where the -- the darts are deployed.</p> <p>16 If they're in the chest, you've got issues with</p> <p>17 preexisting heart conditions, you've got tachycardia</p> <p>18 issues if someone is under the influence of a CNS</p> <p>19 stimulant. There's a number of things at that point</p> <p>20 that -- that would cause a reasonable officer to not go</p> <p>21 beyond that 15-second --</p> <p>22 Q. And do you agree --</p> <p>23 A. -- threshold.</p> <p>24 Q. I'm sorry, go ahead.</p> <p>25 A. I'm through.</p>
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<p>1 force option such as a pistol, it would have to be only</p> <p>2 in immediate defense of life at that time.</p> <p>3 Q. Do you have an opinion as to what Officer Lopera</p> <p>4 transitioned to after the use of the Taser?</p> <p>5 A. An LVNR.</p> <p>6 Q. Okay. And is an LVNR --</p> <p>7 A. Correction. Head strikes prior to LVNR.</p> <p>8 Q. Okay. And head strikes and -- well, not head</p> <p>9 strikes, but strikes and an LVNR are -- are they higher-</p> <p>10 or lower-level uses of force than a Taser?</p> <p>11 A. It depends on --</p> <p>12 Q. Based on Metro's policy, not your experience.</p> <p>13 A. Let me check. They fall under aggressive. I</p> <p>14 mean, I -- based on their old policy, what I have is</p> <p>15 that, you know, LVNR Level 1 was inactive resistance, and</p> <p>16 that's typically tensing, bracing, or running away. That</p> <p>17 would be someone running away, pushing away from an</p> <p>18 officer, not striking the officer. It's typically what</p> <p>19 inactive -- now, obviously, we know it's at aggressive</p> <p>20 and aggravated aggressive levels.</p> <p>21 But it depends. Within their -- their -- their</p> <p>22 continuum, they've got numerous, obviously, options</p> <p>23 within each. And it's just letting the officer know,</p> <p>24 even though it's aggressive, you can still utilize or</p> <p>25 deploy OC spray. Doesn't mean you can't do that.</p>	<p>1 Q. Do you agree with that, or do you think there</p> <p>2 are depart -- if departments say that you can use a Taser</p> <p>3 for longer than 15 seconds, would you criticize those</p> <p>4 departments?</p> <p>5 A. I think it -- I think -- I'm not being critical</p> <p>6 of other departments. Once again, it's -- it's based on</p> <p>7 the totality of the circumstances. If someone's in</p> <p>8 immediate defense of life situation at that point, then a</p> <p>9 prolonged use beyond that 15 seconds may be reasonable,</p> <p>10 based on the set of facts in that matter.</p> <p>11 Q. Okay. Do you know if chokeholds are defined in</p> <p>12 the Nevada Revised Statutes?</p> <p>13 A. I don't know.</p> <p>14 Q. Okay. Let's talk about the LVNR a little bit</p> <p>15 more. How -- you've mentioned earlier -- I think you</p> <p>16 said 7 to 12 seconds in order to render a subject</p> <p>17 unconscious through an LVNR or a chokehold, a rear naked</p> <p>18 choke?</p> <p>19 A. There's different schools of thought.</p> <p>20 Typically 7. I've heard 7 to 12, 10 to 15 seconds. A</p> <p>21 lot of it's going to be dependent on, obviously, the</p> <p>22 person putting on the chokehold, obviously, how</p> <p>23 proficient they are with it.</p> <p>24 Secondly is going to be the level of resistance,</p> <p>25 the size of the subject, the size of the officer, the</p>

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<p>1 terrain in which they're -- they're -- maybe could be on</p> <p>2 the ground; it could be -- depending on where they're at,</p> <p>3 there's a myriad of different factors that come in to</p> <p>4 make what would be a reasonable time frame.</p> <p>5 Q. When Officer Lopera transitioned from the Taser</p> <p>6 to physical contact with Tashi Farmer -- do you remember</p> <p>7 reviewing that in the videos?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have an opinion as to whether Tashi</p> <p>10 Farmer was actively resisting him at that point or not?</p> <p>11 A. I think he was resisting. He was moving in a</p> <p>12 sense, moving his body and not being compliant at that</p> <p>13 time.</p> <p>14 Q. Do you recall a scenario right before Officer</p> <p>15 Lopera transitions where he was attempting to get a</p> <p>16 handcuff on Tashi Farmer's left wrist and Tashi Farmer</p> <p>17 was on his stomach and Tashi Farmer, a few seconds later,</p> <p>18 was on his back and fighting Officer Lopera?</p> <p>19 A. I believe so, but I can't recall.</p> <p>20 Q. Okay. Would that justify the use of hand</p> <p>21 strikes?</p> <p>22 A. Once again, it depends on what would be</p> <p>23 reasonable at that time. The purpose of hand strikes at</p> <p>24 that point would -- wouldn't be reasonable because if</p> <p>25 you're ultimately looking to effect the handcuffing</p>	<p>1 reasons, obviously, weapon retention issues. I don't</p> <p>2 want to roll around on the ground with that person at</p> <p>3 that point.</p> <p>4 Q. How -- I'm sorry.</p> <p>5 A. I may step off that person. I may transition to</p> <p>6 pepper spray while that person's on the ground -- to</p> <p>7 pepper spray and I may deploy an impact weapon such as</p> <p>8 a -- a baton or an ASP and then provide some warnings to</p> <p>9 that person.</p> <p>10 And if that person's still aggressive, then I</p> <p>11 may deploy, you know, a strike to the leg or something</p> <p>12 that -- that -- it would be appropriate at that time,</p> <p>13 with an impact weapon.</p> <p>14 Q. So all of those are options?</p> <p>15 A. They're all options. I mean, you're going to</p> <p>16 look at -- it's based on the totality of the</p> <p>17 circumstances, based on your hypothetical.</p> <p>18 Q. So how do you gain control to get the person</p> <p>19 into cuffs? Do you think hitting them with pepper spray</p> <p>20 would gain their compliance and allow them to be cuffed?</p> <p>21 A. No, but it may, obviously, assist in that</p> <p>22 factor. I mean, you -- it may assist in the sense that</p> <p>23 now you've impaired that person's ability to see, if that</p> <p>24 person's still looking to fight. It just depends on</p> <p>25 what's happening at that time.</p>
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<p>1 technique -- is that you want to control the handcuffs</p> <p>2 and control the arms to do that.</p> <p>3 Once again, by striking someone, especially in</p> <p>4 this matter, 10 to 13 times in the face and head area, is</p> <p>5 not going to help you accomplish what you're -- you're</p> <p>6 looking to do. People are going to put their arms up to</p> <p>7 defend. They're going to move around, as I mentioned</p> <p>8 earlier, in the physiology of the struggle. By doing so,</p> <p>9 you're going to maybe consider that's more resistance</p> <p>10 because you believe that person is, in fact, resisting --</p> <p>11 or more force because you believe that person is</p> <p>12 resisting.</p> <p>13 So ultimately you want to try to control the</p> <p>14 arms and the wrists to effect the handcuffing technique,</p> <p>15 and head strikes or any strikes may be counterproductive</p> <p>16 to what you're doing.</p> <p>17 Q. So if you were the arresting officer and you had</p> <p>18 someone on their stomach and you were attempting to put a</p> <p>19 handcuff on their left wrist and they rolled back over to</p> <p>20 their back and put their hands up, what would your</p> <p>21 appropriate reaction be?</p> <p>22 A. I may even get off them at that time. I may get</p> <p>23 off -- come off them for that -- if I can't get them in a</p> <p>24 control hold where I can mobilize that wrist, I -- I</p> <p>25 don't want to stay in that position for a number of</p>	<p>1 But I may not want to be, you know -- you know,</p> <p>2 mounted on top of that person, conducting downward</p> <p>3 strikes on that person, because the end result is you're</p> <p>4 looking to handcuff that person anyway. And so the</p> <p>5 purpose of the strikes, unless that person is -- is</p> <p>6 aggressive and assaultive at that time, the strikes</p> <p>7 aren't going to be reasonable.</p> <p>8 Q. Why do you think Tashi Farmer did not comply</p> <p>9 with Officer Lopera's commands from the very beginning</p> <p>10 when he ran down the unauthorized hallway to outside when</p> <p>11 he said, "Stop. Don't move"?</p> <p>12 Do you have an opinion as to why he didn't just</p> <p>13 stop and don't move?</p> <p>14 MR. SAYRE: Objection. Calls for speculation.</p> <p>15 A. It could be a number of reasons. He could have</p> <p>16 been mentally ill, could be under the influence. He</p> <p>17 could be just noncompliant. There's a number of reasons</p> <p>18 that he could have done what he did. I don't know.</p> <p>19 Q. But had he, we never would have gotten to any</p> <p>20 other force issues; correct?</p> <p>21 A. Had he stopped?</p> <p>22 Q. Yes.</p> <p>23 A. Hopefully not.</p> <p>24 Q. You've been involved -- sounds like a lot of or</p> <p>25 fairly a lot of combatives. I'll just refer to</p>

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<p>1 combatives. Is that okay phraseology? I'll -- I'll</p> <p>2 include your LAPD time, your private sector training as</p> <p>3 well; is that okay?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So you've got dozens and dozens of hours,</p> <p>6 annual certifications for that type of training; right?</p> <p>7 A. That's correct.</p> <p>8 Q. When you're training in a police setting, you're</p> <p>9 using fellow officers; right?</p> <p>10 A. Yes.</p> <p>11 Q. So one acts as the suspect, and one acts as the</p> <p>12 officer; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Are you familiar with Metro's training in that</p> <p>15 regard, how they conduct their LVNR or their combatives</p> <p>16 training?</p> <p>17 A. I'm not.</p> <p>18 Q. Okay. Sergeant Bland testified that when you've</p> <p>19 got two officers that essentially know the training that</p> <p>20 is supposed to be conducted, it isn't exactly real-life</p> <p>21 scenario, because I know the moves you're about to put on</p> <p>22 me, you know the moves you're about to conduct, and, of</p> <p>23 course, everybody wants to avoid pain.</p> <p>24 Do you understand what I'm discussing in the</p> <p>25 training environment?</p>	<p>1 You'd have people that -- you know, that -- are older</p> <p>2 guys and you get your -- your shoulders hurt or wrists</p> <p>3 hurt.</p> <p>4 So I'm not critical of that training opportunity</p> <p>5 at all. It's just got to be -- make sure that officers</p> <p>6 aren't being complacent during the training is what</p> <p>7 supervisors and trainers should be looking out for.</p> <p>8 Q. Do you think there's any training that you've</p> <p>9 seen that Metro claims to conduct that is insufficient to</p> <p>10 prepare their officers for the street with respect to</p> <p>11 combatives?</p> <p>12 A. I don't have any opinions on that.</p> <p>13 Q. Okay. Have you ever heard the phrase "bleeding</p> <p>14 training so as not to die in war"?</p> <p>15 A. Yes.</p> <p>16 Q. Do you think that Metro should use more</p> <p>17 aggressive combative training to prepare their officers</p> <p>18 for the street, or they -- should they be worried about</p> <p>19 the workers' comps claims that you discussed?</p> <p>20 A. I think they should make good scenario-based</p> <p>21 situational-based training that's as real life as you</p> <p>22 can -- you can replicate without getting officers hurt.</p> <p>23 I think that's important.</p> <p>24 And that can be in a number of different</p> <p>25 training opportunities, but it's not the fact of -- I</p>
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<p>1 A. I do.</p> <p>2 Q. Okay. Have you seen that in your own experience</p> <p>3 in the training environment?</p> <p>4 A. I have.</p> <p>5 Q. Okay. So do you think that if Metro doesn't</p> <p>6 train their officers with a suspect, the training suspect</p> <p>7 that is actively resisting when the officer is attempting</p> <p>8 to employ an LVNR, do you think that's wrong?</p> <p>9 A. No, because you have to be reasonable in your</p> <p>10 training because you can't get officers hurt. So you --</p> <p>11 you try to replicate the best environment you can, but</p> <p>12 you have to be mindful that you -- people have to go to</p> <p>13 work the next day. And there's always the one or two in</p> <p>14 the class that are overzealous during these times that</p> <p>15 get guys' shoulders popped out and other things occur.</p> <p>16 So we will be mindful of the fact that people</p> <p>17 still need to work. We don't want any workers'</p> <p>18 compensation claims that -- that come out of that. But</p> <p>19 you try to create an environment the best you can. I</p> <p>20 know we're using RedMan suits and other things that we</p> <p>21 would use for baton strikes. We would try to create the</p> <p>22 best environment you could.</p> <p>23 I was, you know, working a lot with SWAT's</p> <p>24 defensive tactics cadre. We would have -- and people</p> <p>25 would get hurt all the time. People would get hurt.</p>	<p>1 didn't mention the fact of workers' compensation to be a</p> <p>2 deterrent to train hard, and I agree people should train</p> <p>3 hard, but when you're dealing with ground fighting and</p> <p>4 weaponless retention techniques and utilization of less</p> <p>5 lethal force options, you have to be mindful that people</p> <p>6 can get hurt.</p> <p>7 Q. If you're attempting to employ an LVNR and you</p> <p>8 lose compression on the neck, do you have an opinion as</p> <p>9 to whether you literally have to start the -- if we're</p> <p>10 putting you on a clock and we're going 4 to 7 seconds or</p> <p>11 we're going 7 to 15 seconds, as you testified earlier,</p> <p>12 and you lose the compression on the neck because there's</p> <p>13 a active resistance of any sort, you're rolling around,</p> <p>14 do you have an opinion as to whether you have to</p> <p>15 essentially start the hold over again from a time</p> <p>16 perspective?</p> <p>17 A. I think it's -- it's -- it's based on cumulative</p> <p>18 time. So that being that if the -- if you've -- break it</p> <p>19 and you reapply it again, it would be cumulative from</p> <p>20 that starting point all over again. It wouldn't be the</p> <p>21 fact you did three seconds here, four seconds here, wait</p> <p>22 a minute. I only have a few seconds left. I think it's</p> <p>23 based on once that technique is applied, that it's --</p> <p>24 that's when the clock begins.</p> <p>25 Q. So once it's applied and continuous until</p>

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<p>1 success; correct?</p> <p>2 A. Yeah -- so --</p> <p>3 Q. Meaning you -- I'm sorry. Meaning you can't</p> <p>4 have two or three seconds of compression, the hold gets</p> <p>5 broken for two or three seconds, and then you have two or</p> <p>6 three seconds more, and that accumulates to success and</p> <p>7 the subject's unconscious. That doesn't work is what I'm</p> <p>8 saying.</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. Have you seen any evidence in any of the</p> <p>11 training materials for Metro that indicates that they do,</p> <p>12 in fact, train their officers to employ an LVNR against</p> <p>13 an actively resisting suspect or a subject?</p> <p>14 A. I didn't. I did not see that.</p> <p>15 Q. Okay. You -- are you offering any medical</p> <p>16 opinions in this case?</p> <p>17 A. I am not.</p> <p>18 Q. Are you offering any psychiatric opinions in</p> <p>19 this case?</p> <p>20 A. I am not.</p> <p>21 Q. Do you have an opinion on how long a chokehold</p> <p>22 would have to be applied for someone to die as -- of</p> <p>23 asphyxia?</p> <p>24 A. No.</p> <p>25 Q. Can you define a police restraint?</p>	<p>1 Q. And can you read those into the record, please.</p> <p>2 A. Sure. The Case Review and Analysis Expert</p> <p>3 Opinions by James Borden; the Force Investigation Team</p> <p>4 Report in Custody Death Event -- that's LVMPD Bates No.</p> <p>5 3783-3817; the LVMPD interoffice memo, dated 8/24/17,</p> <p>6 which is the Tactical Review Board, LVMPD 3769 through</p> <p>7 3782; and the Critical Incident Review Process, dated</p> <p>8 August 24th, 2017 -- that's LVMPD 3783 to 3817.</p> <p>9 Q. Okay. Let's look at your report. We premarked</p> <p>10 it as Exhibit 1. And just for clarity, you've produced</p> <p>11 two reports in this case. One was dated, I think, May</p> <p>12 25th, and there was one dated July 12, 2008 (sic). And</p> <p>13 prior to going on the record, we kind of discussed which</p> <p>14 one is the most relevant, and I think your testimony --</p> <p>15 but please answer on the record.</p> <p>16 The July 12, 2018, Rule 26 report is the report</p> <p>17 that you intend to offer if called to testify at trial?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Is there anything in the July report that</p> <p>20 was deleted from the May report or the earlier report?</p> <p>21 A. There were no deletions, no.</p> <p>22 Q. What are the -- what's the difference and the</p> <p>23 reason for the difference between the earlier report and</p> <p>24 the July report?</p> <p>25 A. Primarily the -- the additions. I can turn to</p>
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<p>1 A. In what -- what sense?</p> <p>2 Q. Do you remember in the coroner's report where it</p> <p>3 said "asphyxiated with police restraint"?</p> <p>4 A. Right.</p> <p>5 Q. Did you see the coroner's report?</p> <p>6 A. I did.</p> <p>7 Q. I believe it was in one of the documents, you</p> <p>8 said; right?</p> <p>9 A. I have it right here.</p> <p>10 Q. What's your understanding of what that means, or</p> <p>11 do you have an understanding of asphyxia due to police</p> <p>12 restraint?</p> <p>13 A. That the person was restrained at the time in</p> <p>14 which they died. I believe that's where it -- it comes</p> <p>15 down to.</p> <p>16 Q. Okay. Have you reviewed the defense medical</p> <p>17 experts in this case, Dr. Vilke, Dr. Ly?</p> <p>18 A. I don't know if I've received those documents.</p> <p>19 Q. I don't recall that you did, but...</p> <p>20 A. I don't believe I have.</p> <p>21 Q. Okay. And your counsel is shaking his head, so</p> <p>22 I presume you would have gotten them from him.</p> <p>23 A. And there were four additional documents that I</p> <p>24 received after the submission of my Rule 26 report, the</p> <p>25 second one in July, and they're right here.</p>	<p>1 it. It's -- I believe -- not having both copies here,</p> <p>2 but I believe Opinions 14, 15 --</p> <p>3 Q. The Duty to Intervene section?</p> <p>4 A. Yeah. So -- as well as the command and control</p> <p>5 issues involving Sergeant Travis Crumrine I picked up</p> <p>6 on 14, so...</p> <p>7 Q. Have any of the opinions with respect to Officer</p> <p>8 Lopera changed from the two reports?</p> <p>9 A. They have not.</p> <p>10 Q. Okay. On-Scene Consulting is your consulting</p> <p>11 company?</p> <p>12 A. It is.</p> <p>13 Q. Are you the sole owner, or are there other</p> <p>14 people that provide services through that enterprise?</p> <p>15 A. I had a partner, but he's no longer in the</p> <p>16 company.</p> <p>17 Q. Okay. I want to look at what's been marked by</p> <p>18 you Page 5 of 32. And it says "The Below Listed</p> <p>19 Information is derived from LVMPD."</p> <p>20 Do you see that at the top?</p> <p>21 A. Yes.</p> <p>22 Q. So just from an overview perspective, if we go</p> <p>23 to Page 12 and looking up from the bottom, everything</p> <p>24 between -- on Page 5 through Page 12, but not including</p> <p>25 where it starts "Opinions," is that taken verbatim from</p>

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<p>1 the Metro arrest report?</p> <p>2 A. I think it is verbatim direct -- directly --</p> <p>3 directly verbatim.</p> <p>4 Q. It looked to me like it was, but I just wanted</p> <p>5 to verify that that's -- all of that information, you</p> <p>6 took just directly from the Metro report, so whether</p> <p>7 we're reviewing the arrest report or your expert report,</p> <p>8 as far as those pages, it's consistent?</p> <p>9 A. That's the same thing.</p> <p>10 Q. Okay. So you -- did you do anything, other than</p> <p>11 take this verbatim report for those pages, to</p> <p>12 independently verify the statements made in here?</p> <p>13 A. I don't understand the question.</p> <p>14 Q. I'll give you an example. So did you sit</p> <p>15 through the videos -- so if we go to Page 7 where we</p> <p>16 start at "The camera," it says time stamp, "00:00-The</p> <p>17 camera was activated, and Farmer approached officers</p> <p>18 Lif -- Lopera and Lif."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. So my -- it's just a general question. Did you</p> <p>22 sit through the videos and verify all those time stamps,</p> <p>23 or did you accept Metro's investigation on that -- those</p> <p>24 topics?</p> <p>25 A. I went through -- I sifted through the videos</p>	<p>1 A. He stated it was a rear naked choke.</p> <p>2 Q. Okay. Did you read his various transcribed</p> <p>3 statements?</p> <p>4 A. I did.</p> <p>5 Q. Okay. Are you familiar with how he viewed the</p> <p>6 events?</p> <p>7 A. Through the rearview mirror of his -- of his --</p> <p>8 I guess his side window.</p> <p>9 Q. The left rearview mirror of his Toyota Tacoma?</p> <p>10 A. That's right.</p> <p>11 Q. Are you familiar with how far away he was when</p> <p>12 Officer Lopera transitioned to the LVNR?</p> <p>13 A. I believe about 85 to 90 feet.</p> <p>14 Q. Okay. Do you accept that as true -- where did</p> <p>15 you get that information from?</p> <p>16 A. Somewhere within the -- the record.</p> <p>17 Q. Our expert, Jamie Borden, testified that it</p> <p>18 was -- I forget if he put it in feet or yards, but I</p> <p>19 remember it in yards -- somewhere around 30 to 33 yards.</p> <p>20 Is that consistent? So that would be 90 to --</p> <p>21 A. It's about 85 to 90 feet.</p> <p>22 Q. Okay.</p> <p>23 A. About right. Or 90 feet plus.</p> <p>24 Q. Okay. Do you think someone can accurately</p> <p>25 depict events on the ground behind them in -- in a small</p>
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<p>1 for consistency, but I -- I went off of their time</p> <p>2 stamps.</p> <p>3 Q. And that's -- that's fine. I just wanted to</p> <p>4 know if you sat there and if you disagreed with any of</p> <p>5 those time stamps or if you disagreed with any of the</p> <p>6 descriptions of what occurred during those time</p> <p>7 sequences.</p> <p>8 A. I don't -- no -- no disagreements.</p> <p>9 Q. Okay. So you agree with everything that's in</p> <p>10 the arrest report, and that's why it's incorporated into</p> <p>11 your report.</p> <p>12 A. I believe so, yes.</p> <p>13 Q. Okay. Your -- your -- you agree that Officer</p> <p>14 Lopera and Officer Lif were at their appropriate assigned</p> <p>15 post inside the Venetian as part of Operation Safe Strip;</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. We already talked about the mission of</p> <p>19 Safe Strip, and you agreed with me on that.</p> <p>20 Are you familiar with Pierce's testimony</p> <p>21 relative to the type of hold or neck restraint that</p> <p>22 Officer Lopera allegedly used?</p> <p>23 A. Whose testimony?</p> <p>24 Q. Pierce, Jonathan -- I think Jonathan Pierce, the</p> <p>25 individual in the white Toyota pickup truck.</p>	<p>1 rearview mirror from a Toyota Tacoma while driving in the</p> <p>2 opposite direction with the degree of specificity to</p> <p>3 determine what type of chokehold was being employed?</p> <p>4 A. I don't know.</p> <p>5 Q. Are you familiar with the fact that Jonathan</p> <p>6 Pierce testified that he did not know what an LVNR was?</p> <p>7 A. I believe he did testify to that.</p> <p>8 Q. Okay. So the only phrase he had in his</p> <p>9 wheelhouse, based on his marginal martial arts training</p> <p>10 was rear naked choke; is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So do you give any weight to his</p> <p>13 description that it was one or the other?</p> <p>14 A. No. The only weight I gave it is what I saw on</p> <p>15 video, and I can't make the determination if it's a rear</p> <p>16 naked choke or an LVNR.</p> <p>17 Q. Okay.</p> <p>18 A. And as well as Officer Lopera's statements</p> <p>19 himself, that he several times said he "rear naked choked</p> <p>20 his -- his ass."</p> <p>21 Q. Let's talk about that for a minute. Do you have</p> <p>22 any problem with Officer Lopera saying that he choked him</p> <p>23 out?</p> <p>24 A. The term "choked him out"?</p> <p>25 Q. Yeah.</p>

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<p>1 A. When you say a problem, I --</p> <p>2 Q. I mean does that indicate anything to you? Is</p> <p>3 that a general term? Is that a term of art?</p> <p>4 A. That's a term that is used both in the martial</p> <p>5 arts or self-defense community as well as jargon that</p> <p>6 officers would use when they would choke someone out.</p> <p>7 Q. If somebody said that, "I choked him out," would</p> <p>8 you assume that it was one type of choke or another? For</p> <p>9 example, would you assume it was an LVNR versus an RNC?</p> <p>10 A. I would look at it that they choked out a guy</p> <p>11 who's unconscious, and how they did that, they choked him</p> <p>12 out.</p> <p>13 Q. Okay. And would you make any delineation</p> <p>14 between an air choke versus a blood choke, just based on</p> <p>15 the statement that, "I choked him out"?</p> <p>16 A. Just that they were choked out.</p> <p>17 Q. Okay. Now, if someone said, "I rear naked-ed</p> <p>18 his ass," would you make any indication as to whether</p> <p>19 that was a blood choke or an air choke?</p> <p>20 A. That would lead me to believe that that person</p> <p>21 may have some martial arts training because they</p> <p>22 described that -- that hold specifically. And then</p> <p>23 knowing that, it would obviously be a blood choke.</p> <p>24 Q. Do you think it was indicative of anything that</p> <p>25 Officer Lopera said, "I rear naked-ed his ass"? Was that</p>	<p>1 A. That's not uncommon.</p> <p>2 Q. Let's go to Page 7. Do you see at 1:34,</p> <p>3 "Officer Lopera yelled, 'Stop don't move. You're going</p> <p>4 to get tased.'" We talked about that a little bit</p> <p>5 earlier.</p> <p>6 That would be the warning that Metro requires to</p> <p>7 be given before Taser is deployed; correct?</p> <p>8 A. What's the time frame?</p> <p>9 Q. I --</p> <p>10 A. I see.</p> <p>11 Q. -- 1:34.</p> <p>12 A. I got you. Yes. That would be -- "You're going</p> <p>13 to get tased. Stop." That's a -- he's letting him know.</p> <p>14 He -- that's -- he's providing a warning at that point.</p> <p>15 Q. Yep. Okay. And so, obviously, Tashi Farmer</p> <p>16 could have complied at that point, but did not.</p> <p>17 Do you agree with that?</p> <p>18 A. That he didn't comply?</p> <p>19 Q. Correct.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And then at 1:38, "Officer Lopera yelled,</p> <p>22 'Taser, Taser.' Farmer held his hands up and a cell</p> <p>23 phone visible in his left hand."</p> <p>24 Do you remember seeing that on the video?</p> <p>25 A. Yes.</p>
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<p>1 slang, jargon used loosely after a significant event?</p> <p>2 He's out of breath.</p> <p>3 In my opinion, LVNR doesn't exactly roll off the</p> <p>4 tongue, but do you have an opinion as to what that meant?</p> <p>5 A. Well, he said it more than once, so that's the</p> <p>6 only thing that's concerning. He didn't just say it one</p> <p>7 time. He said it several times to different people</p> <p>8 throughout -- after the -- the event, so this made me</p> <p>9 believe that, in fact, he had done it, just based on his</p> <p>10 own -- his own statements.</p> <p>11 Q. When you were training in Brazilian jiu-jitsu and</p> <p>12 Kempo Karate, and then also -- I think you said Kempo</p> <p>13 Karate was when you were young, before you were a police</p> <p>14 officer?</p> <p>15 A. I was in my late teens, early 20s.</p> <p>16 Q. Okay. And so maybe you were in the Army</p> <p>17 Reserves at that point?</p> <p>18 A. I had just gone in, I think.</p> <p>19 Q. Did you ever use the wrong terminology from</p> <p>20 civilian training when you were in the LAPD or vice</p> <p>21 versa, referred to the same thing differently in the</p> <p>22 wrong context?</p> <p>23 A. I may have.</p> <p>24 Q. Okay. Is that uncommon? Would you find that</p> <p>25 uncommon?</p>	<p>1 Q. Okay. "'Don't move.' Farmer replied, 'OK.'"</p> <p>2 "Don't move." Now, there's been some discussion about</p> <p>3 conflicting verbal commands in your report by Officer</p> <p>4 Lopera. Do you remember that?</p> <p>5 A. What do you mean?</p> <p>6 Q. In your report, you said that Officer Lopera</p> <p>7 gave conflicting verbal commands.</p> <p>8 A. Yeah. I said that as well as that Las Vegas</p> <p>9 Metro came back in their criticisms as well and said that</p> <p>10 he gave, you know, two different commands simultaneously</p> <p>11 that meant to do two different things which were</p> <p>12 conflicting with one another.</p> <p>13 Q. Okay. Can you show me in -- in the timeline</p> <p>14 what you point to to indicate that he gave conflicting</p> <p>15 commands?</p> <p>16 A. 1:51, "Don't move. Get on your stomach."</p> <p>17 Q. And so the -- the conflicting commands are</p> <p>18 you're looking at "Don't move," period, as if to state</p> <p>19 perfectly still versus "I want you to turn over and get</p> <p>20 on your stomach"; is that the conflict?</p> <p>21 A. Yeah. You're telling someone not to move, and</p> <p>22 then you're telling them to get on their stomach. You're</p> <p>23 telling them not to move and get on your -- not to --</p> <p>24 don't move, but to get on your stomach.</p> <p>25 Q. Can it be sequential?</p>

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<p>1 A. I don't understand.</p> <p>2 Q. Well, can I tell you to stop moving and then</p> <p>3 give you a subsequent command to get on your stomach?</p> <p>4 A. You could.</p> <p>5 Q. Okay. Any other places that you think his</p> <p>6 verbal commands conflict?</p> <p>7 A. Let me look.</p> <p>8 MR. McNUTT: How are we doing on tape?</p> <p>9 MR. SAYRE: 2.40.</p> <p>10 MR. McNUTT: Oh, okay. I'm sorry, I didn't hear</p> <p>11 that, Fred. What?</p> <p>12 MR. SAYRE: 2.40.</p> <p>13 MR. McNUTT: Oh, you're suggesting to him the</p> <p>14 answers to the question?</p> <p>15 MR. SAYRE: That's right.</p> <p>16 MR. McNUTT: Oh, okay.</p> <p>17 A. 2.40. "Officer Lopera told Farmer, 'Get on your</p> <p>18 stomach.'" And he was already on his stomach at the</p> <p>19 time.</p> <p>20 Q. Okay. Is it common for officers to repeat</p> <p>21 commands in high-stress situations?</p> <p>22 A. It depends on the officer and depends on the</p> <p>23 situation and depends on the level of stress.</p> <p>24 Q. Okay. And so what is the conflict? I mean,</p> <p>25 Fred pointed you to that testimony or suggested the</p>	<p>1 Lopera asks 'Is he out yet?'"</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Did you hear that on the video?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What does that indicate to you about what</p> <p>7 Officer Lopera knows about the condition of the suspect?</p> <p>8 A. He doesn't know.</p> <p>9 Q. Right. He doesn't know. That's why he's asking</p> <p>10 Sergeant Crumrine; right?</p> <p>11 A. That's correct.</p> <p>12 Q. He then asks twice more the same question. Does</p> <p>13 that indicate to you that he still is not knowledgeable</p> <p>14 about the condition of the suspect?</p> <p>15 A. Seems to be.</p> <p>16 Q. Okay. Does that indicate to you that Officer</p> <p>17 Lopera wants to know the condition of the suspect?</p> <p>18 A. Yes.</p> <p>19 Q. Would that indicate to you that Officer</p> <p>20 Lopera's, you know, going to release the hold if -- if</p> <p>21 the suspect is out, in fact, out?</p> <p>22 A. I don't know what he's going to do. I know he's</p> <p>23 just asking if he's out yet.</p> <p>24 Q. Okay. Does he -- at what point does he get</p> <p>25 indication, based on anything in this timeline or other</p>
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<p>1 testimony to you by pointing 2.40 out to you.</p> <p>2 What does that conflict with?</p> <p>3 A. Well, there's several. It's not just 2.40.</p> <p>4 It's 2 --</p> <p>5 Q. I'm asking all. Tell me.</p> <p>6 A. Well, just, you know, the officer's excitability</p> <p>7 at that time. They're telling him to do something that</p> <p>8 he's already doing, giving him commands that he's already</p> <p>9 doing, so if -- if you're laying on your stomach and</p> <p>10 someone's yelling at you to get on your stomach, it may</p> <p>11 create some confusion to that person that you're yelling</p> <p>12 to, especially when you're yelling it to him several</p> <p>13 times in a row.</p> <p>14 Q. Is it your testimony that between 2:40 and, say,</p> <p>15 2:52 that Farmer was laying perfectly flat on his</p> <p>16 stomach, not rolling on his side, not rolling over to his</p> <p>17 back?</p> <p>18 A. I'm not testifying to that.</p> <p>19 Q. Okay. So what are you testifying to?</p> <p>20 A. That he was observed laying on his stomach.</p> <p>21 Q. Okay. That's what the Metro arrest report said.</p> <p>22 Do you agree with that for that whole time span?</p> <p>23 A. I'd have to look -- if you want to show me the</p> <p>24 tape. I would have to look at the tape.</p> <p>25 Q. Okay. We'll get to it. Go to 3:13. "Officer</p>	<p>1 information you may have, that he should let go?</p> <p>2 A. Well, at 3:25 Tran -- and I know that might be a</p> <p>3 conflict if it's Tran or Crumrine. I know there's some</p> <p>4 conflicting statements as to -- said, "Let him go." And</p> <p>5 then at 3:26, "Officer Lopera asked, 'Are you sure?'"</p> <p>6 And then "Tran replied, 'Yeah,'" if it's, in fact, Tran.</p> <p>7 Q. Okay. So the part at 3:25 that's in</p> <p>8 parentheses, italics, and boldened, that's your comment</p> <p>9 about the -- there's been different testimony about who</p> <p>10 actually said that; right?</p> <p>11 A. That's correct.</p> <p>12 Q. That wasn't in the original arrest report.</p> <p>13 A. That's right.</p> <p>14 Q. That's the only change; right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And so one second later, him saying, "Are</p> <p>17 you sure?" Officer Tran or Crumrine says, "Yeah." Do</p> <p>18 you have an opinion as to whether the hold was released</p> <p>19 or not at that point? And by the way, when I say "hold,"</p> <p>20 I mean the pressure, not that the encircling arm was</p> <p>21 removed from around the neck.</p> <p>22 A. I believe it was released right around that</p> <p>23 time.</p> <p>24 Q. Okay. Are you aware that Sergeant Crumrine said</p> <p>25 his perception was that Ken Lopera immediately released?</p>

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<p>1 A. Sergeant Crumrine, he had the hold on while</p> <p>2 Sergeant Crumrine was there for well over a minute. And</p> <p>3 I know that Tran and Flores were there for 46 seconds</p> <p>4 while that hold was still applied to -- to Mr. Farmer.</p> <p>5 Q. That's a broader question. We'll get to it in a</p> <p>6 minute. My question was simply that -- are you aware</p> <p>7 that Sergeant Crumrine testified in his deposition that</p> <p>8 when he said -- because the testimony is that -- I think</p> <p>9 it's pretty well vetted. We all agree that it was</p> <p>10 Sergeant Crumrine who said, "Let him go, Ken." Tran</p> <p>11 testified, "That wasn't me." Crumrine, I think,</p> <p>12 testified that it was him.</p> <p>13 Are you aware that in his deposition, Crumrine</p> <p>14 also testified that, yes, his perception was that Ken</p> <p>15 did, in fact, release the hold?</p> <p>16 A. Yes, he stated that.</p> <p>17 Q. When a suspect is in an LVNR, when you think of</p> <p>18 releasing the hold or -- does that imply to you -- have</p> <p>19 you ever in your report thought that releasing the hold</p> <p>20 means removing the encircling arm from around the neck or</p> <p>21 simply releasing the pressure around the neck and keeping</p> <p>22 the encircling arm in place?</p> <p>23 A. Remove the hold. That's take the arm from</p> <p>24 around the neck.</p> <p>25 Q. Okay. So is that consistent with LVMPD policies</p>	<p>1 place, as far as the encircling arm, until the individual</p> <p>2 is in cuffs. Sergeant Bland also testified to that</p> <p>3 point.</p> <p>4 Would you defer to their opinions, or do you</p> <p>5 have a different opinion?</p> <p>6 A. I defer to their opinions.</p> <p>7 Q. So when we go back and look at your report and</p> <p>8 you use the language that -- that the plaintiffs have</p> <p>9 used in this case about how long the hold was maintained,</p> <p>10 is it your opinion that that hold period simply means the</p> <p>11 encircling arm was in place, or are you testifying that</p> <p>12 there was pressure put on Tashi Farmer's body or neck</p> <p>13 that entire time?</p> <p>14 A. I can't discern what level of pressure was on</p> <p>15 his neck at any time.</p> <p>16 Q. Okay. So when you talked briefly -- because you</p> <p>17 segued into -- Crumrine was there for how many seconds</p> <p>18 prior to the holding release?</p> <p>19 A. Two to three seconds after it was initially</p> <p>20 applied, Sergeant Crumrine was on scene.</p> <p>21 Q. Okay. And what is your criticism of -- of that?</p> <p>22 A. He should have immediately interceded and -- and</p> <p>23 had him remove the -- the hold if he failed to do, so he</p> <p>24 should have physically done that.</p> <p>25 Q. Why should he have immediately interceded?</p>
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<p>1 on that point?</p> <p>2 A. I don't know.</p> <p>3 Q. So if an officer has a suspect in an LVNR and</p> <p>4 the suspect goes out, what is supposed to happen at that</p> <p>5 point, per LVMPD policy?</p> <p>6 A. The person's going to, obviously, be woken up,</p> <p>7 and then, obviously, they're going to get medical</p> <p>8 treatment.</p> <p>9 Q. Is he supposed to be putting cuffs first?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And does the officer that's deploying the</p> <p>12 LVNR remove his encircling arm before the individual's</p> <p>13 placed in cuffs?</p> <p>14 A. I believe he's -- maintains the hold until the</p> <p>15 handcuffs are put on.</p> <p>16 Q. So he maintains the encircling arm even though</p> <p>17 he's released the pressure?</p> <p>18 A. Right.</p> <p>19 Q. Okay. Are you familiar with -- of the</p> <p>20 deposition testimony of Kasey Kirkegard, Officer Kasey</p> <p>21 Kirkegard?</p> <p>22 A. No.</p> <p>23 Q. Okay. She was one of the FIT detectives --</p> <p>24 excuse me, CIRT detectives, and she testified very</p> <p>25 clearly that the LVNR is supposed to be -- remain in</p>	<p>1 A. Because there's no reason at that point --</p> <p>2 Mr. Farmer wasn't displaying any aggressive</p> <p>3 inter-combative actions at that time that would</p> <p>4 necessitate a hold.</p> <p>5 Q. Okay. So take me to the timeline on Page 9 or</p> <p>6 any other page you'd like to go to.</p> <p>7 A. Okay. As to what?</p> <p>8 Q. Tell me at what point here Sergeant Crumrine had</p> <p>9 a duty to intervene, as your counsel puts it.</p> <p>10 A. This is the initial statement.</p> <p>11 Q. Page 9 of your report --</p> <p>12 A. Right.</p> <p>13 Q. -- is the timeline taken from the arrest report?</p> <p>14 A. Right. It would be right at 3:01.</p> <p>15 Q. So 3:01 -- I'll just read it. It says "Sergeant</p> <p>16 Crumrine arrived and said 'Put your'" -- curse word --</p> <p>17 "'hands behind your back.'" I don't understand your</p> <p>18 connection.</p> <p>19 He's obviously trying to get Tashi Farmer's hand</p> <p>20 in cuffs; correct?</p> <p>21 A. Right.</p> <p>22 Q. So what was -- what -- how does that connect to</p> <p>23 his duty to intervene immediately at this point?</p> <p>24 A. He was there for a minute and 10 seconds while</p> <p>25 it was applied, and --</p>

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<p>1 Q. Before this 3:01 or after this 3 --</p> <p>2 A. No. From the time -- he was there for a minute</p> <p>3 and 10 seconds during the application process. So if it</p> <p>4 was applied for a minute and 13 seconds, he was present</p> <p>5 during the application for a minute and 10 seconds.</p> <p>6 Q. Right. And I'm asking you to show me what that</p> <p>7 looks like in the timeline here. When did Officer</p> <p>8 Crumrine show up on this timeline?</p> <p>9 A. According to this timeline, it shows at 3:01 is</p> <p>10 when he arrived.</p> <p>11 Q. He arrived, okay. And so you're saying at</p> <p>12 3:01 -- your testimony was that's when Sergeant Crumrine</p> <p>13 had an immediate duty to intervene; correct?</p> <p>14 A. According to this timeline, yes.</p> <p>15 Q. Is there a different timeline that I'm --</p> <p>16 A. My understanding, based on my review, is that he</p> <p>17 arrive -- in looking at the video, he arrives three</p> <p>18 seconds into this tase -- I mean to the LV -- application</p> <p>19 of the LVNR or rear naked choke and was present for a</p> <p>20 minute and 10 seconds of that time, of the minute --</p> <p>21 total of the minute and 13 seconds that was applied.</p> <p>22 Q. Okay. What would prompt Sergeant Crumrine to</p> <p>23 have a duty to intervene?</p> <p>24 A. He's a supervisor. There's force that's being</p> <p>25 applied that's unreasonable at that time and unnecessary,</p>	<p>1 person's out yet.</p> <p>2 Q. And you testified earlier that that indicates he</p> <p>3 clearly doesn't know the condition. The only reason an</p> <p>4 officer would need the -- the suspect to go out would be</p> <p>5 because he believes he's actively resisting; correct?</p> <p>6 A. But the only reason that you'd -- you'd put</p> <p>7 someone out is if they were actively resisting. Based on</p> <p>8 my review of the tape, he was not actively resisting, so</p> <p>9 the -- the reason to have the hold on at any time, I -- I</p> <p>10 believe was unreasonable.</p> <p>11 And then having it on for that period of time,</p> <p>12 as I mentioned, when someone else is present, they should</p> <p>13 have had a duty to intercede. So the fact that he has it</p> <p>14 on and he's questioning, "Is he out yet?" he should have</p> <p>15 not had it on in the first place.</p> <p>16 Q. But once he had it on -- okay. Strike that.</p> <p>17 How would Sergeant Crumrine know that he had --</p> <p>18 well, explain to me what a duty to intervene is, broadly.</p> <p>19 A. If I see you as an officer involved in a force</p> <p>20 that I deem or reasonably believe is excessive at that</p> <p>21 time or not consistent with what the subject's actions</p> <p>22 are, levels of resistance, that I need to verbally tell</p> <p>23 you to stop. I can direct somebody to stop you, or I can</p> <p>24 intervene and stop you myself.</p> <p>25 Q. And so it could be an otherwise legitimate use</p>
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<p>1 that Mr. Farmer's actions did not necessitate the use of</p> <p>2 a lethal hold at that time, and he should have intervened</p> <p>3 in -- he had a duty to intercede at that time.</p> <p>4 Q. Okay. How would he know whether it was a lethal</p> <p>5 hold or not?</p> <p>6 A. Well, it's going to be based on the person's</p> <p>7 actions at the time, what -- their level of resistance at</p> <p>8 that time. And based on my review of the video and</p> <p>9 review of the record in this matter, that his level of</p> <p>10 resistance was not such to be able to justify that use to</p> <p>11 have -- applied for a minute and 13 seconds.</p> <p>12 Q. Okay. But Officer Lopera, he clearly doesn't</p> <p>13 know what the situation is with the suspect; right? So</p> <p>14 the duty to intervene is strictly related to Sergeant</p> <p>15 Crumrine?</p> <p>16 A. No. I mean, Lopera should have released the</p> <p>17 hold. The fact that he's wondering if he's out yet or</p> <p>18 not is going to be depending on the level of resistance.</p> <p>19 So why is he concerned if he's out if Farmer, based on</p> <p>20 review of the video, is not doing anything that would</p> <p>21 necessitate the use of the hold from the onset?</p> <p>22 Q. Doesn't that indicate to you that he doesn't</p> <p>23 believe Farmer is done resisting?</p> <p>24 A. No. I didn't ask that. Believes -- to me that</p> <p>25 he's wondering if -- by applying the hold, if the</p>	<p>1 of force that is excessive or it could be an unauthorized</p> <p>2 type of force being used? Does it apply to both of those</p> <p>3 scenarios?</p> <p>4 A. Could be any force, unauthorized, legitimate, or</p> <p>5 not. If you reasonably believe at that point that that</p> <p>6 force is excessive, you have a duty to go ahead and</p> <p>7 intercede -- intervene to stop that force or direct</p> <p>8 somebody to do so.</p> <p>9 Q. And you think Sergeant Crumrine's immediate duty</p> <p>10 to intervene starts at 3:01?</p> <p>11 A. Right when he arrives.</p> <p>12 Q. Okay. So an officer responding to another</p> <p>13 officer that's in distress, code red -- do you remember</p> <p>14 that Officer Lopera called for a code red to open up the</p> <p>15 radio lines and things of that nature?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Does an officer's -- is his first</p> <p>18 reaction, under policy, to detain the suspect and then</p> <p>19 figure the situation out, or is it to go -- to run into</p> <p>20 the sus -- the situation and determine whether his fellow</p> <p>21 officer is within policy?</p> <p>22 A. No. It's what the -- what the subject's actions</p> <p>23 are at the time when they arrive. You're not looking at</p> <p>24 policy determinations. You're looking at what the level</p> <p>25 of resistance is by the subject at the time in which you</p>

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<p>1 first see that. And then you obviously need to intercede</p> <p>2 if you reasonably believe that that force is excessive at</p> <p>3 the time.</p> <p>4 Q. Okay. I want to make sure that one thing is</p> <p>5 clear because I think we've answered a couple different</p> <p>6 ways twice. With respect to anything in here where it</p> <p>7 says "the hold was released," how do you interpret that,</p> <p>8 that the -- there was pressure released from Tashi</p> <p>9 Farmer's neck, or do you interpret that as the encircling</p> <p>10 arm should have been removed?</p> <p>11 A. I believe that it's -- it's the pressure. It's</p> <p>12 that -- that -- that the hold. If you have someone in a</p> <p>13 hold and you -- there's no pressure there, then the</p> <p>14 hold's not applied.</p> <p>15 Q. If I simply have my encircling arm around your</p> <p>16 neck and I'm not applying pressure, is that unreasonable</p> <p>17 or excessive force?</p> <p>18 A. Without pressure, no.</p> <p>19 Q. Okay. Are you aware that Sergeant Tran also</p> <p>20 testified that he believed that Officer Lopera</p> <p>21 immediately released the hold when Crumrine said to</p> <p>22 release the hold?</p> <p>23 A. Well, Tran was there for 46 seconds while the</p> <p>24 hold was applied, so I don't know what point --</p> <p>25 Q. So how do you know the hold was applied for 46</p>	<p>1 Q. Well, so does somebody go lights out, or is</p> <p>2 there a waning of resistance?</p> <p>3 A. No. If you're resisting, I'm not going to ask</p> <p>4 if you're out, because I'm going to know, based on your</p> <p>5 movements and actions, that you're not out. I'm going to</p> <p>6 ask if you're out -- is that I have no movement from you</p> <p>7 at that time or minimal movement from you and I believe</p> <p>8 that you're out at that point. That's why he's going to</p> <p>9 ask that.</p> <p>10 Q. How does Ken Lopera know that all of a sudden</p> <p>11 Tashi Farmer just was -- didn't start complying? How</p> <p>12 does he know whether he's out or whether he's just merely</p> <p>13 started complying? He can't see him; right?</p> <p>14 A. He can tell if he's resisting, based on -- he's</p> <p>15 got his body --</p> <p>16 Q. No, complying. I didn't say "resisting"; I said</p> <p>17 "complying."</p> <p>18 A. Well, if he's not resisting, then he would be</p> <p>19 complying.</p> <p>20 Q. Okay. So I think we're going around in a little</p> <p>21 bit of a circle here. So your position is that he was</p> <p>22 still resisting and that's why Tashi -- or excuse me,</p> <p>23 your position is Tashi Farmer was still resisting and</p> <p>24 that's why Ken Lopera was asking whether he's out yet?</p> <p>25 A. No. I think that he was already out at that</p>
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<p>1 seconds? Can you tell that from the video?</p> <p>2 A. Yes. You can tell -- I don't know if there's</p> <p>3 pressure being applied, but I can tell the hold is</p> <p>4 applied.</p> <p>5 Q. Okay. That's what I'm getting at. So there's</p> <p>6 an encircling arm in place, but you can't tell whether</p> <p>7 there was one ounce of pressure or 500 pounds of pressure</p> <p>8 on Tashi Farmer's neck, can you?</p> <p>9 A. Right, but you would think that the fact that</p> <p>10 he's questioning him, "Is he out?" at that time would</p> <p>11 make a reasonable officer believe that he had been</p> <p>12 applying pressure the whole time, because if he hadn't</p> <p>13 been, he wouldn't be asking, "Is he out yet?"</p> <p>14 He wouldn't be asking if he's out if there was</p> <p>15 no pressure on the neck. If he just simply had his arm</p> <p>16 around his neck, it would only be because he had pressure</p> <p>17 on the neck and he applied the hold.</p> <p>18 Q. Or another reasonable interpretation is that</p> <p>19 the -- the suspect is still resisting and he's -- the</p> <p>20 officer's hoping that he's out so he can release the</p> <p>21 hold.</p> <p>22 Isn't that a reasonable interpretation?</p> <p>23 A. That didn't make sense, because if the person's</p> <p>24 resisting, you wouldn't be asking, "Are they out?" You'd</p> <p>25 know they're not out because they're resisting.</p>	<p>1 time, and I think he was probably already out when he had</p> <p>2 asked that, but he can't see the front part of his face</p> <p>3 to see if, in fact, he's out, so he's asking that.</p> <p>4 Q. And that's a legitimate question; right?</p> <p>5 A. It's a legitimate question, right, but you</p> <p>6 wouldn't be asking that if there was any level of</p> <p>7 resistance because I would know, if I have you in that</p> <p>8 hold, that your kind of lifeless at that point.</p> <p>9 Q. And my question is this: How -- does Ken Lopera</p> <p>10 know whether Tashi Farmer is out or if he's merely</p> <p>11 started complying? So Sergeant Crumrine, looking at</p> <p>12 Tashi Farmer's face, would be the one to tell him, "He's</p> <p>13 out" or "He's -- he's not out, but he's complying. Relax</p> <p>14 the hold."</p> <p>15 I mean, those are two logical results of the</p> <p>16 question, "Is he out yet?" Correct?</p> <p>17 A. It could be.</p> <p>18 Q. Okay. I think we were crossing lines there on</p> <p>19 something that we didn't intend to.</p> <p>20 A. Okay.</p> <p>21 MR. SAYRE: Can we take a break?</p> <p>22 MR. McNUTT: Sure.</p> <p>23 THE VIDEOGRAPHER: The time is 1:16 p.m. We are</p> <p>24 going off the record.</p> <p>25 (Whereupon, a recess was taken at this time.)</p>

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<p>1 THE VIDEOGRAPHER: The time is 1:21 p.m. We are</p> <p>2 back on the record.</p> <p>3 BY MR. McNUTT:</p> <p>4 Q. Let's talk about the hand strikes for a minute.</p> <p>5 Are you aware of testimony by the security guards that</p> <p>6 were right there at the scene that testified that the 10</p> <p>7 to 12 strikes that were alleged that Mr. Farmer -- excuse</p> <p>8 me, Mr. Lopera threw did not all connect? Are you aware</p> <p>9 of that testimony?</p> <p>10 A. I'm aware of that. Just seems inconsistent with</p> <p>11 the injuries.</p> <p>12 Q. What injuries?</p> <p>13 A. To Mr. Farmer.</p> <p>14 Q. What specifically?</p> <p>15 A. LVMPD 3801, "Bruising on the back of left</p> <p>16 shoulder, back of left arm, and inside upper lip.</p> <p>17 Lacerations to exterior upper lip. Multiple lacerations</p> <p>18 and swelling around the right eye. Laceration to the</p> <p>19 bridge of the nose. Laceration under the left eye.</p> <p>20 Swelling under the left eye. Abrasion under his right</p> <p>21 ear. Abrasion, inner right knee. Abrasion, left bicep.</p> <p>22 Abrasion to back left shoulder. Injure" --</p> <p>23 Q. Let me ask you something?</p> <p>24 A. "Injured upper back."</p> <p>25 Q. Are you reading from the document that you're</p>	<p>1 Mr. Tashi Farmer did not commit any crime that would</p> <p>2 necessitate arrest."</p> <p>3 Even though you've testified here today that</p> <p>4 trespass is a crime, being under the influence of illegal</p> <p>5 narcotics is a crime, and that you acknowledge that</p> <p>6 Officer Lopera believed there was carjacking about to</p> <p>7 occur, do you stand by that opinion?</p> <p>8 A. Yes.</p> <p>9 Q. None of those facts change your mind at all?</p> <p>10 A. No. As I mentioned earlier, that -- the</p> <p>11 trespass, we don't know if it was a trespass, the fact</p> <p>12 that you walk down a hallway that he shouldn't have</p> <p>13 walked down or ran down.</p> <p>14 The issue with the -- under the influence was</p> <p>15 facts known at the time. We didn't -- none of us knew</p> <p>16 until the toxicology report came -- came out.</p> <p>17 And -- and then I mentioned earlier that if he</p> <p>18 reasonably believed that a carjacking occurred, that</p> <p>19 would be appropriate for the initial use of force, but</p> <p>20 based on the person who was in the car, they never would</p> <p>21 have arrested Tashi Farmer for the carjacking, because</p> <p>22 Mr. Pierce would have said that, "I never felt that I was</p> <p>23 a victim of a carjacking."</p> <p>24 Q. Did Mr. -- Officer Lopera know Mr. Pierce's</p> <p>25 testimony when he was perceiving Tashi Farmer's conduct?</p>
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<p>1 referring to as LVMPD 3801?</p> <p>2 A. Yes. That's Page 19 of 35.</p> <p>3 Q. Okay. Of your report?</p> <p>4 A. No. It's of the Force Investigation Team</p> <p>5 report.</p> <p>6 Q. Oh, got you. Okay. So is that your medical</p> <p>7 opinion about the results from that -- is that from a</p> <p>8 photo?</p> <p>9 A. That's just from the report. I'm not giving any</p> <p>10 medical opinions. It just seems consistent with someone</p> <p>11 who's getting struck.</p> <p>12 Q. Have you seen the coroner's photos of</p> <p>13 Mr. Farmer's face?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. Have you seen any bruising around his left eye</p> <p>16 or lacerations around his left eye?</p> <p>17 A. I don't recall.</p> <p>18 Q. Okay. It didn't strike you that that was</p> <p>19 inconsistent with what the report said?</p> <p>20 A. It didn't.</p> <p>21 Q. Okay. Page 19 of your report, you say "I base</p> <p>22 my opinion" -- it's right at the top. "I base my opinion</p> <p>23 on the fact that Mr. Tashi S. Farmer was never an</p> <p>24 imminent threat of death or serious bodily injury to</p> <p>25 LVMPD Police Officer Ken Lopera or anyone else and</p>	<p>1 A. No, but that's not what you asked me. You asked</p> <p>2 me based on -- that's why I said that the reasonable</p> <p>3 belief that Officer Lopera may have had when he</p> <p>4 approached the truck, would have been reasonable, if he</p> <p>5 reasonably believed that a carjacking was -- occurred, to</p> <p>6 use the initial deployment of the Taser.</p> <p>7 Q. If Officer Lopera did not reasonably believe all</p> <p>8 those things, trespass, under the influence of illegal</p> <p>9 drugs or alcohol, and that a carjacking was going to take</p> <p>10 place, why did he use force to detain Tashi Farmer?</p> <p>11 A. I don't know.</p> <p>12 Q. I mean, do you think he did it out of some</p> <p>13 malice towards Tashi Farmer?</p> <p>14 A. I -- that's not for me to answer.</p> <p>15 Q. Well, I'm asking in your expert opinion to posit</p> <p>16 a different reason for why he would use force to detain</p> <p>17 this subject?</p> <p>18 MR. SAYRE: Objection. Calls for speculation.</p> <p>19 A. That would bring up credibility determinations,</p> <p>20 and I'm not making any of those against Officer Lopera.</p> <p>21 Q. Aren't you making credibility determinations</p> <p>22 based on reasonableness?</p> <p>23 A. I am, based on the fact that --</p> <p>24 Q. Okay. Let's go to Page 20, paragraph 7. "It is</p> <p>25 my opinion that a reasonable officer acting consistent</p>

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<p>1 with standard police practices would not have used lethal</p> <p>2 force in this situation. It is my opinion that LVMPD" --</p> <p>3 I guess there's no "Officer" in there -- "Kenneth Lopera</p> <p>4 used excessive and unnecessary deadly force when he</p> <p>5 admitted using the 'Rear Naked Choke Hold' for 1 minute</p> <p>6 and 13 seconds."</p> <p>7 Where did Officer Lopera admit that he used a</p> <p>8 rear naked chokehold for one minute and 13 seconds?</p> <p>9 A. When he stated he "rear naked choked his ass."</p> <p>10 Q. Okay. And was there something I missed in the</p> <p>11 video where he says, "for one minute and 13 seconds"?</p> <p>12 A. No. No, he didn't say that. He --</p> <p>13 Q. So he didn't admit that?</p> <p>14 A. No. And that's why I only put in what he stated</p> <p>15 in parentheses, that being "rear naked chokehold."</p> <p>16 Q. Okay. I don't want to get into grammar too far,</p> <p>17 but "admitted" is a verb, and the sentence -- the</p> <p>18 sentence comes to an end after "for one minute and 13</p> <p>19 seconds." So your grammatical error is noted. You do</p> <p>20 not mean to imply that Officer Lopera admitted that he</p> <p>21 employed any choke for a minute and 13 seconds.</p> <p>22 He never made those statements; correct?</p> <p>23 A. That's correct. And I think I missed the word</p> <p>24 "term." I should have put -- when he'd been using the</p> <p>25 term or phrase "rear naked choke," but he at no time</p>	<p>1 hemorrhaging in the neck that would be consistent with</p> <p>2 being choked.</p> <p>3 Do you read that as being choked by a rear naked</p> <p>4 choke or choked by an LVNR?</p> <p>5 A. That's a medical opinion I'm not going to give.</p> <p>6 I just made the statement that it was consistent with</p> <p>7 being choked. It coincides with -- with Officer Lopera</p> <p>8 state -- stating he rear naked choked him. That would be</p> <p>9 Mr. --</p> <p>10 Q. But you don't have a problem, as a use of force</p> <p>11 expert, if, in fact, Ken Lopera used the rear naked</p> <p>12 choke; it was -- it was the fact that he used any choke.</p> <p>13 Is that -- am I understanding your testimony?</p> <p>14 A. Well, it would violate their department policy.</p> <p>15 It would be outside of the department policy, and I</p> <p>16 would -- that wouldn't be an opinion for me because I</p> <p>17 would look at it that he went outside of his policy and</p> <p>18 it's -- it's -- it's a move or a hold that's not trained</p> <p>19 by Las Vegas Metro.</p> <p>20 Q. But that's an administrative remedy, as you</p> <p>21 testified earlier, for being outside of policy, not</p> <p>22 something that would just justify a lawsuit; right?</p> <p>23 A. Well, it depends. A lot of times, most of the</p> <p>24 opinions in the cases I look at, did they violate the</p> <p>25 department policy? or I believe based on the department</p>
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<p>1 admitted using it for the minute and 13 seconds.</p> <p>2 Q. He made no statements that I'm aware of about</p> <p>3 how long anything was utilized.</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. So if you could do this over again, you'd</p> <p>6 change that aspect to make it a little more clear?</p> <p>7 A. I would.</p> <p>8 Q. Okay. Are there any other -- is it just simply</p> <p>9 that Officer Lopera used the phrase, "I rear naked-ed his</p> <p>10 ass," whether he used that phrase one or -- once or twice</p> <p>11 is immaterial to me.</p> <p>12 Is that the facts or evidence that you're</p> <p>13 pointing to to suggest that he knowingly used a</p> <p>14 nondepartment hold?</p> <p>15 A. Just as I mentioned earlier, just based on his</p> <p>16 own admission that he used it and nothing other than</p> <p>17 that.</p> <p>18 Q. Right. But I'm just asking, that's it, the fact</p> <p>19 that he said, "I rear naked-ed his ass" is what informs</p> <p>20 this opinion for you?</p> <p>21 A. From my perspective, yes. That might be --</p> <p>22 other people give different opinions, but I don't have an</p> <p>23 opinion on was it an LVNR or a rear naked choke.</p> <p>24 Q. Okay. According to -- right below that,</p> <p>25 according to Dr. Olson, during the autopsy, she found</p>	<p>1 policy. So he would have violated department policy on</p> <p>2 the use of the hold because it was nonauthorized by Las</p> <p>3 Vegas Metro.</p> <p>4 Q. Okay. Let's go to 21. Towards the bottom where</p> <p>5 it says, "Lastly, I base my opinion on my review of the</p> <p>6 facts in this matter" and then there's some timeline</p> <p>7 stuff -- do you see that?</p> <p>8 A. Oh --</p> <p>9 Q. Do you see --</p> <p>10 A. Yes.</p> <p>11 Q. Where the time starts and it says 6:38?</p> <p>12 A. Yes.</p> <p>13 Q. "Officer Lopera told Officer Flores and Rybacki</p> <p>14 what happened. During the conversation he stated, quote,</p> <p>15 I start wailing on this dude then I rear mounted and</p> <p>16 choked him out."</p> <p>17 Why did you include that in your report? What's</p> <p>18 the importance of that, if any?</p> <p>19 A. Because it -- it coincides with -- it supports</p> <p>20 the opinion that I gave on No. 7, based on the fact that</p> <p>21 he's rear mounted him and he choked him out.</p> <p>22 Q. And what does "rear mount," to you, mean?</p> <p>23 A. Getting behind him and choke him out.</p> <p>24 Q. And that's applicable to an LVNR or a rear naked</p> <p>25 choke or many other types of moves, right, in martial</p>

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<p>1 arts?</p> <p>2 A. Could be.</p> <p>3 Q. Including completely authorized LVMPD training?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. So you don't have a problem with that</p> <p>6 statement, then; correct?</p> <p>7 A. Well, it's just showing admission that he, in</p> <p>8 fact, choked him out.</p> <p>9 Q. Okay. But is there any -- but you testified</p> <p>10 earlier, I thought, that you didn't have a problem with</p> <p>11 the word "choke." It was simply the "rear naked-ed his</p> <p>12 ass" that indicated to you that he was outside of</p> <p>13 department policy?</p> <p>14 A. Right. And the term "choke" is used quite</p> <p>15 frequently in different --</p> <p>16 Q. So you don't have a problem with that?</p> <p>17 A. I don't have a word -- problem with the word</p> <p>18 "choke."</p> <p>19 Q. Okay. So what -- what do you have a problem</p> <p>20 with in terms of this sentence? What's inaccurate about</p> <p>21 that, or what -- why did you feel you needed to include</p> <p>22 that?</p> <p>23 A. It just supports it. It supports what I was</p> <p>24 stating, that -- that he mounted him and choked him out,</p> <p>25 that the fact the active choking out still, in fact,</p>	<p>1 a chokehold was applied or pressure was applied for one</p> <p>2 second or a hundred seconds. Are you familiar with that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So why do you feel like you've include --</p> <p>5 what support to your opinion does this statement,</p> <p>6 "According to Jonathan Pierce, you can't choke someone</p> <p>7 that long"?</p> <p>8 A. Well, it supports the -- the -- the time that I</p> <p>9 mentioned, for one minute and 13 seconds. When the</p> <p>10 threshold's 15 seconds, he's a little bit under a minute</p> <p>11 over that. And he admits that the result of that one</p> <p>12 minute and 13 seconds is that he choked him out, which</p> <p>13 means it -- what he intended on doing actually, in fact,</p> <p>14 occurred.</p> <p>15 Q. Well, once again, he didn't admit anything about</p> <p>16 time; right?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. And Pierce has no clue as to how long any</p> <p>19 pressure was applied to Tashi Farmer's neck; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. So how does that support -- I mean, this a broad</p> <p>22 statement; "Can you choke -- should you choke someone for</p> <p>23 a minute and 13 seconds?" to which everyone would say,</p> <p>24 "No"; right? I mean, continuously choke someone for a</p> <p>25 minute, 13 seconds, would -- does anybody agree that</p>
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<p>1 occurred.</p> <p>2 Q. Okay. You say "According to Jonathan Pierce,</p> <p>3 you can't choke someone that long," right down below</p> <p>4 there. Do you give Jonathan -- first off, does Jonathan</p> <p>5 Pierce offer an opinion as to how long pressure was</p> <p>6 applied to Tashi Farmer's neck?</p> <p>7 A. Pressure, no. I think he just -- duration.</p> <p>8 Q. Well, I mean, a choke without pressure really</p> <p>9 isn't a choke. You would agree with me; right?</p> <p>10 A. I agree with that.</p> <p>11 Q. More like a hug?</p> <p>12 A. I don't know if it falls in the hug category,</p> <p>13 but it's --</p> <p>14 Q. Well --</p> <p>15 A. -- it's not a choke.</p> <p>16 Q. -- I'm not offering to -- I'm not offering to</p> <p>17 demonstrate either.</p> <p>18 So we're really talking about pressure to the</p> <p>19 neck to make it a choke; right? Otherwise, we just have</p> <p>20 an encircling arm.</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And Pierce testified at his deposition --</p> <p>23 did you review his deposition?</p> <p>24 A. I did.</p> <p>25 Q. He testified he couldn't tell whether it was --</p>	<p>1 that's correct? Obviously not.</p> <p>2 But I'm asking you, do you read his deposition</p> <p>3 and do you believe that Jonathan Pierce is suggesting</p> <p>4 that Ken Lopera actually applied pressure for that long</p> <p>5 to Tashi Farmer's neck?</p> <p>6 A. I don't know what -- there's no way for him to</p> <p>7 know if -- if the pressure was applied during that time.</p> <p>8 Q. Okay. So why do you include this as</p> <p>9 justification in your report?</p> <p>10 A. Because the hold was applied for a minute and 13</p> <p>11 seconds in itself.</p> <p>12 Q. The encircling arm was present for a minute</p> <p>13 and 13 seconds.</p> <p>14 A. But it -- obviously, it had its desired result,</p> <p>15 because, in fact, he was choked out. So the point of</p> <p>16 time of how long that pressure was, I don't know. We</p> <p>17 know that when Tran arrived, that he was already -- he</p> <p>18 believed he was already unconscious. And he still</p> <p>19 maintained the choke the entire time that Tran was there</p> <p>20 until he -- ultimately he released it.</p> <p>21 Q. Let's take your timeline. If, in fact, Officer</p> <p>22 Lopera was attempting to gain compliance by utilizing an</p> <p>23 LVNR for a minute and 13 seconds, but he was only</p> <p>24 effective in the last 10 seconds, are you going to</p> <p>25 testify as an expert that a chokehold was applied for a</p>

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<p>1 minute, 13?</p> <p>2 A. No.</p> <p>3 Q. Because you can't.</p> <p>4 A. That's correct.</p> <p>5 Q. So you don't know whether or not the state of</p> <p>6 unconsciousness was achieved at the minute and 13 second</p> <p>7 or at second number one in that minute, 13 count; do you?</p> <p>8 A. Well, Officer Tran will be able to -- when he</p> <p>9 arrived, he stated that he was already out and he still</p> <p>10 maintained that hold for 46 seconds after that.</p> <p>11 Q. Officer Tran -- where do you recall Officer Tran</p> <p>12 stating that?</p> <p>13 A. Well, both he and Flores were present for 46</p> <p>14 seconds while the -- while the chokehold was applied.</p> <p>15 Q. What do you base that on?</p> <p>16 A. My review of the facts. He arrive -- Officer</p> <p>17 Tran and Flores arrived at 3 -- at 3:25.</p> <p>18 Q. That's what I'm asking. Are you going to the</p> <p>19 arrest report or -- you know, in terms of a timeline?</p> <p>20 A. 3:25. I believe it's on the arrest report.</p> <p>21 Q. Officer -- Officer Tran arrived and said, "Let</p> <p>22 him go, Ken."</p> <p>23 A. At 3 -- what --</p> <p>24 Q. Okay. Page 9 of your report.</p> <p>25 A. Yeah, at 3:25. And then he doesn't release the</p>	<p>1 this timeline; correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. So how -- how do you then make the non</p> <p>4 sequitur statement that he -- Officer Lopera does not</p> <p>5 release the hold, implying that it's pressure, until 46</p> <p>6 seconds later? That's what I don't understand.</p> <p>7 A. Well, I didn't say that -- and the report</p> <p>8 doesn't say it. "Released the hold on Farmer"; it</p> <p>9 doesn't say, "Released the pressure."</p> <p>10 Q. So go on to the Duty to Intervene. Is it your</p> <p>11 opinion that -- that the officers were violative of the</p> <p>12 duty to intervene if they -- if they knew -- their</p> <p>13 perception was that the pressure was released on Tashi</p> <p>14 Farmer's neck, but that merely Ken Lopera had not removed</p> <p>15 his encircling arm, that they violated their duty to</p> <p>16 intervene?</p> <p>17 A. Yes.</p> <p>18 Q. Oh, okay. I did not understand that. Thank</p> <p>19 you. What harm does an encircling arm around a suspect's</p> <p>20 neck that is not applying pressure cause?</p> <p>21 A. I -- I just mentioned it. I don't know what</p> <p>22 harm it caused, and I don't know the level of pressure he</p> <p>23 had when he had his arm on. I'm looking at just the</p> <p>24 timeline that is on the report and was on the body cam</p> <p>25 video, body-worn camera video, that the time in which it</p>
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<p>1 hold until -- 4:11 is when he released the hold, so</p> <p>2 that's 46 seconds.</p> <p>3 Q. Are you -- are you aware that Officer Kasey</p> <p>4 Kirkegard testified that 4:11 means that that's when Ken</p> <p>5 Lopera removed his arm from around his neck, not when he</p> <p>6 released the pressure on Tashi Farmer's neck?</p> <p>7 A. I don't know.</p> <p>8 Q. Are you interpreting this to mean that Ken</p> <p>9 Lopera put pressure on Tashi Farmer's neck for that whole</p> <p>10 time?</p> <p>11 A. I don't know.</p> <p>12 Q. So you don't know?</p> <p>13 A. I don't know. I just know he released the hold</p> <p>14 at that time.</p> <p>15 Q. So what does that mean to you?</p> <p>16 A. I don't know at what point how much pressure was</p> <p>17 applied, just the fact that when Tran arrived along with</p> <p>18 Flores that he was already out and he still maintained</p> <p>19 that hold for 46 seconds after that.</p> <p>20 Q. Okay. Let's define "hold." Okay. You've said</p> <p>21 that a choke without pressure is not a hold; right?</p> <p>22 A. Right. As long as it's not -- as long as you</p> <p>23 have no pressure on the carotid arteries or --</p> <p>24 Q. Right. So you can't testify regard -- about</p> <p>25 whether or not there was pressure at any point during</p>	<p>1 was applied to the time in which it was removed and</p> <p>2 Flores and Tran were present for the last 46 seconds</p> <p>3 until it was removed. And Crumrine was present for the</p> <p>4 entire time, other than three seconds.</p> <p>5 Q. If Tashi Farmer was mentally ill, should Officer</p> <p>6 Lif, who was a crisis intervention officer -- should she</p> <p>7 have taken the lead?</p> <p>8 A. If she would have recognized from the start that</p> <p>9 she believed -- like she testified to, that she believed</p> <p>10 him to be mentally ill, she should have, yes. I think</p> <p>11 she should have interjected that.</p> <p>12 I think if -- if Officer Lopera didn't know that</p> <p>13 and being that she's CIT training, she should have told</p> <p>14 Officer Lopera, "Hey, come here for a second. I think</p> <p>15 this guy's got something going on. Based on my training,</p> <p>16 I believe he's mentally ill." I think she owed Officer</p> <p>17 Lopera that, to do that.</p> <p>18 Q. Do you recall her testimony as to whether or not</p> <p>19 she had time to make that assessment on Tashi Farmer?</p> <p>20 A. I don't know. I don't recall what she said.</p> <p>21 She said she believed he was mentally ill, is what she</p> <p>22 stated. I can look up the...</p> <p>23 Q. If an officer detains someone for, let's say, 60</p> <p>24 minutes and it turns out that that individual has not</p> <p>25 committed a crime, has the officer done anything wrong</p>

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<p>1 under the Fourth Amendment or the Constitution?</p> <p>2 A. For no more than? Are you talking about for an</p> <p>3 investigative stop?</p> <p>4 Q. Sure.</p> <p>5 A. No.</p> <p>6 Q. So the officer doesn't have to be right in order</p> <p>7 to initiate a detention of an individual, do they?</p> <p>8 A. Reasonable.</p> <p>9 Q. Okay. Reasonable. Reasonable suspicion?</p> <p>10 A. Right.</p> <p>11 Q. Right. Which is a lower standard than probable</p> <p>12 cause?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay.</p> <p>15 A. And the answer to your question earlier --</p> <p>16 Q. Which question earlier?</p> <p>17 A. The one I'm going to respond on. According</p> <p>18 to -- according to Officer Ashley Lif, she believed that</p> <p>19 Mr. Farmer was mentally ill -- that's on Confidential</p> <p>20 Document 0121 -- and also stated in her deposition on</p> <p>21 Page 23 that she believed that Mr. Farmer was possibly</p> <p>22 suffering from a mental illness.</p> <p>23 Q. Did she violate her duty to intervene?</p> <p>24 A. As relates to force, no, because she got there</p> <p>25 after the fact.</p>	<p>1 place, and your officer tased the individual in the exact</p> <p>2 same manner, utilized hand strikes in the exact same</p> <p>3 manner, effected a neck restraint in the exact same</p> <p>4 manner, except the suspect did not die, what would you --</p> <p>5 what would you counsel that officer, if anything?</p> <p>6 A. I think it would be well beyond -- beyond</p> <p>7 counseling. I think it would meet -- exceed that</p> <p>8 threshold to counseling.</p> <p>9 Q. Would you bring him up on charges?</p> <p>10 A. I wouldn't do that as a sergeant. You mean</p> <p>11 criminal charges?</p> <p>12 Q. Yes.</p> <p>13 A. Do I think that if someone didn't die in this</p> <p>14 matter would someone be brought up on criminal charges?</p> <p>15 Q. Yes.</p> <p>16 A. No.</p> <p>17 Q. So his conduct would have been fine but for the</p> <p>18 fact that --</p> <p>19 A. I don't know if conduct would have been fine.</p> <p>20 It may have violated all -- policy enough that they</p> <p>21 may -- may have terminated him, based on using -- and</p> <p>22 head strikes and multiple Taser applications. Well, I</p> <p>23 wouldn't foresee that anyone would have been charged with</p> <p>24 murder if the person didn't die.</p> <p>25 Q. Do you expect officers, after they've been</p>
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<p>1 Q. What about as it relates to making this</p> <p>2 after-the-fact diagnosis on Tashi Farmer in the few</p> <p>3 seconds that they -- that she had a window?</p> <p>4 A. I don't know if there's -- not a duty, but I</p> <p>5 think there's a responsibility, if you're trained in</p> <p>6 something, to let a partner officer know that you believe</p> <p>7 something is going on. I think that's -- I think that's</p> <p>8 important.</p> <p>9 Q. If -- if Tashi Farmer would have complied after</p> <p>10 the tasing, would you still have said the tasing was</p> <p>11 excessive force?</p> <p>12 A. Only if -- if Officer Lopera stated, "I did it</p> <p>13 because I had reason to believe he was going to -- the</p> <p>14 guy ran. I thought he was going to carjack someone. I</p> <p>15 deployed the Taser, put him in handcuffs and that --</p> <p>16 that's it." I -- that's what he stated as a reasonable</p> <p>17 belief, then I would think that would be appropriate.</p> <p>18 Q. If Officer Lopera was one of your officers back</p> <p>19 when you were on active duty as a sergeant and this whole</p> <p>20 event went down, with the exception that Mr. Farmer did</p> <p>21 not die, the exact same interaction to the initiate --</p> <p>22 where Tashi Farmer initiated contact with the officers,</p> <p>23 the pursuit, the belief that the guy had trespassed, the</p> <p>24 belief that he was under influence of narcotics, the</p> <p>25 belief that that there was a carjacking about to take</p>	<p>1 involved in the use of force, any type of force, to be</p> <p>2 perfectly articulate in terms of how they describe that</p> <p>3 right after the event, or do you give a little leeway to</p> <p>4 how someone describes the events?</p> <p>5 A. Leeway.</p> <p>6 Q. Do you think the fact that Ken Lopera said, "I</p> <p>7 rear naked-ed his ass" has any legal import?</p> <p>8 MR. SAYRE: Calls for a legal conclusion. Lack</p> <p>9 of foundation.</p> <p>10 Q. You can answer.</p> <p>11 A. I don't know. I don't know if the -- the rear</p> <p>12 naked -- or I think they're -- legally, it's going to be</p> <p>13 was the force excessive? I don't think the manner in</p> <p>14 which it was excessive is going to matter.</p> <p>15 Q. Okay. You talk briefly in your report about the</p> <p>16 failure of Crumrine and I think Lif, maybe one other or</p> <p>17 two, activate their body-worn cam. Does that have any</p> <p>18 bearing on your opinion about the use of force by Ken</p> <p>19 Lopera?</p> <p>20 A. Sure. I think it -- for both sides. I think</p> <p>21 it's important that for both the benefit of Officer</p> <p>22 Lopera and as well as for the matter -- is that when we</p> <p>23 have cameras that are -- are worn and -- and used as they</p> <p>24 should be, that it gives a -- it gives, obviously, the</p> <p>25 department a better opportunity to look at all the</p>

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<p>1 evidence that's available to them when they make their</p> <p>2 determination.</p> <p>3 Q. But you're not holding that against Officer</p> <p>4 Lopera. It wasn't his fault that they did not activate</p> <p>5 their body-worn camera; correct?</p> <p>6 A. No. I agree with -- with the Metro's assessment</p> <p>7 on that, that they themselves found it to be a violation.</p> <p>8 And -- and, you know, they felt that they should have</p> <p>9 done that as well.</p> <p>10 Q. Okay.</p> <p>11 MR. McNUTT: Fred, I'd like to go to the video.</p> <p>12 And what I would think would be helpful, like we did it</p> <p>13 in the other conference room, if I came over to the side.</p> <p>14 Obviously, we still want to keep the witness on the</p> <p>15 video. I don't need to be on the video, but I'll set up</p> <p>16 my laptop in front of him.</p> <p>17 If maybe we could switch seats or you could --</p> <p>18 obviously, maybe you just want to be behind so you can</p> <p>19 see what we're looking at.</p> <p>20 Is that acceptable to you?</p> <p>21 MR. SAYRE: Sure. Is that all right?</p> <p>22 THE WITNESS: Works for me.</p> <p>23 Q. And we're still under the agreement that no</p> <p>24 one's demonstrating hugs.</p> <p>25 A. I'm good with that.</p>	<p>1 Officer Lif said they had been outside The Coffee Bean.</p> <p>2 They had gotten coffee; right?</p> <p>3 A. Right.</p> <p>4 Q. Okay. So -- and -- so let's -- if you want to</p> <p>5 look at your report, tell me whether you agree at 00:00,</p> <p>6 this is where the camera is activated.</p> <p>7 A. I agree.</p> <p>8 Q. Do you recognize Tashi Farmer there?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Now, watch where Tashi Farmer -- he falls</p> <p>11 through the chains, and now he appears to be running down</p> <p>12 the hallway we talked about that was employee access</p> <p>13 only; right? Remember that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now there's no sound. And there's Ken</p> <p>16 Lopera falling. Dropped his flashlight. There's no</p> <p>17 sound until when -- after the body-worn camera is</p> <p>18 activated.</p> <p>19 A. Okay.</p> <p>20 Q. Thirty seconds. Have you seen all this video</p> <p>21 before?</p> <p>22 A. I have.</p> <p>23 MR. McNUTT: Fred, have you seen this --</p> <p>24 MR. SAYRE: I have.</p> <p>25 MR. McNUTT: So this is all I've seen, other</p>
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<p>1 Q. Anything else.</p> <p>2 A. I'm good with it.</p> <p>3 MR. McNUTT: Just go off the record for just a</p> <p>4 second. I'll get set up.</p> <p>5 THE VIDEOGRAPHER: The time is 1:47 p.m. We are</p> <p>6 going off the record.</p> <p>7 (Whereupon, a recess was taken at this time.)</p> <p>8 THE VIDEOGRAPHER: The time is 1:51 p.m. We are</p> <p>9 back on the record.</p> <p>10 BY MR. McNUTT:</p> <p>11 Q. We're back on the record. Scott, have you seen</p> <p>12 this -- we're at the start of a video I'm about to play.</p> <p>13 Have you seen this start of a video before?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. Okay. So at -- at any time when I ask you a</p> <p>16 question, if you want to go back and see it -- because</p> <p>17 I'm going to be, you know, asking you between what the</p> <p>18 conduct is in the video versus the time stamp. So if we</p> <p>19 need to go back, we'll -- it's a little imprecise with</p> <p>20 this mouse, but we'll work with it as best we can.</p> <p>21 So the first thing I -- I'm going to ask you is</p> <p>22 give me an approximate -- first off, do you recognize</p> <p>23 this as being the body-worn camera view from Ken Lopera?</p> <p>24 A. First view, yes.</p> <p>25 Q. Okay. This -- the testimony was -- or I think</p>	<p>1 than -- this and the merge.</p> <p>2 And Craig, is that what's on what you gave us</p> <p>3 today?</p> <p>4 MR. ANDERSON: This is what's produced, yes.</p> <p>5 Q. So let me ask you this: Do you have any idea</p> <p>6 where Officer Lif is at this point?</p> <p>7 A. No.</p> <p>8 Q. Do you understand why she's not on his hip?</p> <p>9 A. I don't know why she wouldn't be.</p> <p>10 Q. Okay. Should she be?</p> <p>11 A. Yes.</p> <p>12 Q. Do you still understand that he's inside the</p> <p>13 Venetian at this point?</p> <p>14 A. I do, sir.</p> <p>15 Q. Now we're outside the --</p> <p>16 A. That's correct.</p> <p>17 Q. And that was the comment made to the security</p> <p>18 officer; right?</p> <p>19 A. That's right.</p> <p>20 Q. Okay. So is -- that's 1:19, "Officer Lopera</p> <p>21 asked a security guard if he observed anyone running,"</p> <p>22 but it's not in quotes.</p> <p>23 THE REPORTER: But?</p> <p>24 MR. McNUTT: But it's not in quotes.</p> <p>25 Q. Now, we're outside the Venetian at this point.</p>

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<p>1 What should Officer Lopera have done?</p> <p>2 A. Get on the air and broadcast that he's in foot</p> <p>3 pursuit.</p> <p>4 Q. Should he have continued to pursue Tashi Farmer?</p> <p>5 A. Within reason. He should be taking containment</p> <p>6 at that point.</p> <p>7 Q. Okay.</p> <p>8 A. If he believes he has a crime.</p> <p>9 Q. Okay. Is -- is letting him go an option, just</p> <p>10 quitting pursuing?</p> <p>11 A. Sure.</p> <p>12 Q. Okay. "Stop. Don't move." Did you hear that?</p> <p>13 A. I did.</p> <p>14 Q. Okay. And is that a warning consistent with</p> <p>15 Metro's policies, prior to using a Taser?</p> <p>16 A. "Stop. Don't move" is a command.</p> <p>17 Q. Okay.</p> <p>18 A. He's not at the warning phase yet.</p> <p>19 Q. Okay. What's a warning phase to you?</p> <p>20 A. If you don't do something, like for instance,</p> <p>21 "Stop or I'm going to -- stop" --</p> <p>22 Q. "You're going to get tased"?</p> <p>23 A. "You're going to get tased."</p> <p>24 Q. Got you. Sorry, I didn't mean to talk over each</p> <p>25 other. My fault.</p>	<p>1 A. Appears to be.</p> <p>2 Q. Okay. So in your opinion, when you say there's</p> <p>3 contradicting commands, that's not one of the things</p> <p>4 you're criticizing Officer Lopera about; right?</p> <p>5 A. No. He's telling the driver instructions, so --</p> <p>6 Q. And that's fair, and sometimes these situations</p> <p>7 are confusing; right?</p> <p>8 A. It is. I don't know why he would have said</p> <p>9 that. He would want him to drive away. But nonetheless,</p> <p>10 he told the -- the driver to stop right there.</p> <p>11 Q. Okay. That's a reasonable call. It could have</p> <p>12 gone either way?</p> <p>13 A. Sure.</p> <p>14 Q. Okay. So since the 1:37 when Tashi -- where we</p> <p>15 stopped and we were looking at Tashi Farmer laying there</p> <p>16 and you said there was NMI. We're now at 1:43, and</p> <p>17 there's been no further Taser use; correct?</p> <p>18 A. Doesn't appear to be.</p> <p>19 Q. Okay. So at this point, we're at 1:43, and</p> <p>20 Tashi Farmer is now sitting up. Do you see that?</p> <p>21 A. That's correct.</p> <p>22 Q. Does that indicate to you that Tashi Farmer is</p> <p>23 complying with Officer Lopera?</p> <p>24 A. What is he telling him to do at that point?</p> <p>25 Q. Well, go back to your timeline. So Officer</p>
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<p>1 So is that the warning?</p> <p>2 A. There it is.</p> <p>3 Q. Okay. So the Taser has struck Mr. Farmer in the</p> <p>4 back at this point; correct? And we're at 1:39, and</p> <p>5 Mr. Farmer's laying on his back with his head very near</p> <p>6 to the white truck.</p> <p>7 Would you agree with me?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. And do you think NMI has been achieved at</p> <p>10 this point?</p> <p>11 A. We're at 1:37, and I do believe NMI is achieved,</p> <p>12 based on the video.</p> <p>13 Q. Okay. Which is -- and what indicates that to</p> <p>14 you?</p> <p>15 A. The way his body is positioned. He's locked up.</p> <p>16 He's on the ground. He fell directly to the ground.</p> <p>17 Q. Muscular contraction?</p> <p>18 A. Yes.</p> <p>19 Q. Now, the "Stop right there," if you look at the</p> <p>20 transcript, it reads a little differently than it appears</p> <p>21 on the video. Because on -- on the transcript, it says</p> <p>22 "Pointed in the direction of the white truck and yelled</p> <p>23 'Stop right there.'"</p> <p>24 Now, you agree with me that Officer Lopera is</p> <p>25 directing the driver of the truck to stop right there?</p>	<p>1 Lopera has -- at this point he's already said, "Stop.</p> <p>2 Don't move. You're going to get tased." He's yelled,</p> <p>3 "Taser, Taser, Taser." Yells, "Taser, Taser" again. He</p> <p>4 said, "Don't move" and then "Don't move" again. And so</p> <p>5 at that point, we're -- we're at 1:43.</p> <p>6 A. Ah-huh.</p> <p>7 Q. Has Tashi Farmer agreed or complied by not</p> <p>8 moving when he's sitting up?</p> <p>9 A. No.</p> <p>10 Q. If a suspect remains prone on the ground after</p> <p>11 having NMI and just laid there, would that have been</p> <p>12 compliance to you?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So tell me when Officer Lopera uses the</p> <p>15 Taser again.</p> <p>16 A. Right there.</p> <p>17 Q. Okay. So there was about a 10-second window</p> <p>18 between --</p> <p>19 A. Based on the Taser download, there's a</p> <p>20 three-second window from the first deployment to the</p> <p>21 second deployment.</p> <p>22 Q. Okay. But we just went through and we looked</p> <p>23 at -- we were at 1:36; right? "Taser, Taser, Taser."</p> <p>24 That was when he was falling there. And here's 1:46 and</p> <p>25 it -- he just went again. And you stated there were --</p>

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<p>1 at 1:43, I said, "There's been no further Taser usage,"</p> <p>2 and you agreed with me.</p> <p>3 A. That's a result of the Taser. You can go back a</p> <p>4 little bit. I -- I wasn't really looking for that.</p> <p>5 Q. Where do you want me to go?</p> <p>6 A. Go to, like, 1:40, if you could.</p> <p>7 Q. How about 1:39?</p> <p>8 A. That's perfect.</p> <p>9 Q. Okay. So Tashi's on the ground. He's got the</p> <p>10 one Taser on; right? So another Taser goes at 1:46.</p> <p>11 A. Right.</p> <p>12 Q. So there was a 10-second window, based on what</p> <p>13 you just saw in the video, between Taser strikes; right?</p> <p>14 A. Appears to be, yes.</p> <p>15 Q. Okay. Is a 10-second window enough for Ken</p> <p>16 Lopera to assess Tashi Farmer's reactions?</p> <p>17 A. Yeah, but it still doesn't meet the threshold at</p> <p>18 that time to deploy the second Taser, because the actions</p> <p>19 are such that they -- they're not aggressive, according</p> <p>20 to their policy, that subject attempt to cause harm to</p> <p>21 you or someone else, according to LVMPD's policies, so --</p> <p>22 Q. Little different question I asked. I was just</p> <p>23 asking whether that 10-second window is enough within</p> <p>24 which an officer can assess the -- the reaction of the</p> <p>25 suspect.</p>	<p>1 A. That's correct.</p> <p>2 Q. And we're at 1:53. And so we've got Tashi</p> <p>3 Farmer replied, "I will," then yelled, "I will."</p> <p>4 A. Right. And that's at 1:57, according to the</p> <p>5 timeline here.</p> <p>6 Q. 1:55.</p> <p>7 A. But "Get on your stomach" is at 1:57.</p> <p>8 Q. Okay. Back up to the prior piece, please.</p> <p>9 1:54, "Get on your stomach."</p> <p>10 A. That's correct.</p> <p>11 Q. 1:51, "Get on your stomach."</p> <p>12 A. That's correct.</p> <p>13 Q. So at 1:51, so Farmer -- you know, it reads</p> <p>14 "Farmer attempted to put his shoe on again."</p> <p>15 Alternatively, you could read it Farmer is attempting to</p> <p>16 get up.</p> <p>17 Do you have an opinion of whether he's putting</p> <p>18 on his shoe or attempting to get up?</p> <p>19 A. I think he's putting on his shoe.</p> <p>20 Q. Okay. An officer that's in the heat of the</p> <p>21 fight, how would that appear to him? Could -- could he</p> <p>22 potentially think that he was reaching for a weapon?</p> <p>23 A. I think he looks like he's putting on his shoe.</p> <p>24 Q. Okay. In slow motion, now that the -- the frame</p> <p>25 is frozen, it looks like that. Do you think you would</p>
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<p>1 A. Yeah. 10 seconds --</p> <p>2 Q. Ten seconds a long time; right?</p> <p>3 A. It can be.</p> <p>4 Q. So your criticisms that he did not assess, do</p> <p>5 you still think they're accurate, based on the fact that</p> <p>6 he was looking at Tashi Farmer on the ground; Tashi</p> <p>7 Farmer did not comply with his commands to not move; and</p> <p>8 all of a sudden, 10 seconds later or into that 10</p> <p>9 seconds, Tashi Farmer's -- it looks to me like he's</p> <p>10 attempting to get back up?</p> <p>11 You -- would you view that as compliance by the</p> <p>12 suspect?</p> <p>13 A. Maybe not complying, but still doesn't meet the</p> <p>14 threshold of what the policy is on deployment -- the</p> <p>15 subsequent Taser deployment.</p> <p>16 Q. Okay. Okay. You heard that, "I will. I will"?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. We agree that's Tashi Farmer?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So he's saying, "Don't move. Get over on</p> <p>21 your stomach." You testified earlier that was a</p> <p>22 contradicting statement. I said it was -- could be</p> <p>23 sequential.</p> <p>24 But the question is now he's telling Tashi</p> <p>25 Farmer to get on his stomach; correct?</p>	<p>1 see that as an officer in the middle of a fight?</p> <p>2 A. I think that I would -- if that's the case, if I</p> <p>3 had that concern, I'd move to position of cover, at least</p> <p>4 behind the truck, and then let -- it looks like he's</p> <p>5 putting on his shoe.</p> <p>6 Q. So he's saying, "I will." You see his left hand</p> <p>7 moving behind his back where the Taser is?</p> <p>8 A. Yes.</p> <p>9 Q. Does that indicate to you or would you -- would</p> <p>10 a reasonable officer think that he's trying to defeat the</p> <p>11 Taser by pulling out a probe?</p> <p>12 A. Well, he's also responding to the pain of,</p> <p>13 obviously, the deployment, so as I mentioned earlier, he</p> <p>14 could be looking to reach out to take the probe out.</p> <p>15 Q. It could be either way; right?</p> <p>16 A. Sure.</p> <p>17 Q. Okay. We don't know.</p> <p>18 A. Right.</p> <p>19 Q. You don't know.</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. So he's -- he's yelled, "Get on your</p> <p>22 stomach" many, many times at this point. You'd agree</p> <p>23 with me?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Now, at this point we're at 2:01. So why</p>

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<p>1 don't you flip your page so that we can see. In the</p> <p>2 2:01, Officer Lopera yells, "Get on your stomach."</p> <p>3 Farmer says, "I will."</p> <p>4 Okay. We're at 2:05. Do you agree with me that</p> <p>5 Officer Lopera is in contact with him?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And what is he doing with Tashi Farmer,</p> <p>8 or what is he trying to do?</p> <p>9 A. Control his left arm.</p> <p>10 Q. Okay.</p> <p>11 A. Or wrist.</p> <p>12 Q. What position is Tashi Farmer in right now?</p> <p>13 A. Appears to be on his -- going onto his stomach.</p> <p>14 Q. So he's on his stomach?</p> <p>15 A. Yes.</p> <p>16 Q. And Officer Lopera has his left arm?</p> <p>17 A. Appears to, yes.</p> <p>18 Q. And what time hack are we at?</p> <p>19 A. 2:06.</p> <p>20 Q. Why is Tashi Farmer on his side at 2:10?</p> <p>21 A. Well, he's responding to being tased.</p> <p>22 Q. Now he's on his back.</p> <p>23 A. Responding to being tased.</p> <p>24 Q. Okay. None of this is resistance? This is all</p> <p>25 response to being tased?</p>	<p>1 Q. So Tashi Farmer is sitting up at 2:22; agree?</p> <p>2 A. Appears to be.</p> <p>3 Q. Do you have that "Okay, sir"?</p> <p>4 A. Yes.</p> <p>5 Q. Who is that?</p> <p>6 A. Sounds like Tashi -- Tashi Farmer.</p> <p>7 Q. You think that sounds like Tashi Farmer?</p> <p>8 A. I think it sounds like -- can we play it again</p> <p>9 for me.</p> <p>10 Q. I want you to look at -- can you back up one</p> <p>11 page. "Venetian Hotel Security arrived. They gave</p> <p>12 Farmer verbal commands and a guard grabbed onto Farmers'</p> <p>13 arms. Farmer says, 'I will.'" That's at 2:20, and we're</p> <p>14 at 2:15. I want you to listen. You heard kind of this</p> <p>15 high-pitched, "I will. I will"?</p> <p>16 A. Ah-huh.</p> <p>17 Q. Kind of almost with a southern accent. I don't</p> <p>18 know where he hailed from.</p> <p>19 A. Ah-huh.</p> <p>20 Q. And then I want you to listen to the "Okay, sir"</p> <p>21 and tell me if you think it's the same voice.</p> <p>22 Heard that "turn around"?</p> <p>23 A. Ah-huh.</p> <p>24 Q. You think that's Tashi Farmer?</p> <p>25 A. No.</p>
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<p>1 A. It's either/or. He's either resisting or</p> <p>2 responding to being tased. It's no doubt that he's</p> <p>3 moving and flailing because he's being tased.</p> <p>4 Q. Okay. "Help me out," he yelled to the Venetian</p> <p>5 security guard. Do you agree with me on that?</p> <p>6 A. I agree with you.</p> <p>7 Q. Does that indicate to you that he needs</p> <p>8 assistance or he has the situation well at hand?</p> <p>9 A. He needs help.</p> <p>10 Q. Okay. So do you -- do you know who this officer</p> <p>11 is? Can you tell from the video?</p> <p>12 A. No.</p> <p>13 Q. But we would agree that -- would you agree with</p> <p>14 me that's a Venetian security guard?</p> <p>15 A. Appears to be.</p> <p>16 Q. And what -- and what's he trying to do?</p> <p>17 A. Control his -- his arm.</p> <p>18 Q. Left arm. Now, if Tashi Farmer had simply</p> <p>19 stayed on his stomach, what would have happened?</p> <p>20 A. Well, the issue, once again, it goes back to</p> <p>21 the -- the Tase -- Taser deployment's continued</p> <p>22 throughout, so it's causing him to move, you know -- and</p> <p>23 once again, if you run a tase again, you should warn</p> <p>24 again and then, secondly, give a reasonable opportunity</p> <p>25 to comply prior to, you know, tasing again.</p>	<p>1 Q. Okay. You hear that "Okay, sir. Okay, sir"?</p> <p>2 A. Ah-huh.</p> <p>3 Q. Do you think that's the Venetian security guard,</p> <p>4 or do you think that's Tashi Farmer?</p> <p>5 A. I don't think it's Tashi Farmer. I don't know</p> <p>6 who it is.</p> <p>7 Q. Right. It's not Tashi Farmer, based clearly on</p> <p>8 listening to his voice; right?</p> <p>9 A. Doesn't appear to be.</p> <p>10 Q. So that's an error in the arrest report; isn't</p> <p>11 it?</p> <p>12 A. Where?</p> <p>13 Q. Where it says Farmer replied, "Okay, sir," 2:29</p> <p>14 and 2:29.</p> <p>15 A. It's actually 2:27. He says, "Okay, sir." That</p> <p>16 says 2:29.</p> <p>17 Q. Okay. Well, do you want to go back to 2:27 and</p> <p>18 listen to it again? Do you agree that this is not Farmer</p> <p>19 saying, "Okay, sir"?</p> <p>20 A. It doesn't appear to be.</p> <p>21 Q. Okay. We're at 2:33. You agree he's holstering</p> <p>22 his ECD?</p> <p>23 A. Yes.</p> <p>24 Q. Did you see Tashi Farmer kick or hit Officer</p> <p>25 Lopera at that point?</p>

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<p>1 A. I saw something come back. If you can replay</p> <p>2 that for me.</p> <p>3 Q. Okay. I may go back a little farther than that.</p> <p>4 Does that look good?</p> <p>5 A. Yes.</p> <p>6 Q. So we're at 2:28, going forward. Holster his</p> <p>7 ECD. Boom. See that?</p> <p>8 A. Yes.</p> <p>9 Q. Was that a kick or a strike by Tashi Farmer?</p> <p>10 A. I don't know.</p> <p>11 Q. But it was Tashi Farmer striking Officer Lopera?</p> <p>12 A. It was movement. I don't know if he actually</p> <p>13 struck him or not.</p> <p>14 Q. You didn't -- you didn't hear the punch? You</p> <p>15 didn't hear the impact?</p> <p>16 A. I heard it. I didn't hear impact.</p> <p>17 Q. You didn't hear impact? Let me play it for you</p> <p>18 again.</p> <p>19 A. Play it again.</p> <p>20 Q. Boom. You heard the impact that time?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So is that active resistance?</p> <p>23 A. That's active resistance at that point.</p> <p>24 Q. Tashi Farmer is actively resisting?</p> <p>25 A. Appears to be.</p>	<p>1 A. No, just that Officer Lopera's comments about he</p> <p>2 was wailing down on him would -- made me believe that he</p> <p>3 was -- those were punches that caused that injury.</p> <p>4 Q. Bravado is not a crime; right?</p> <p>5 THE REPORTER: What was it?</p> <p>6 MR. McNUTT: Bravado is not a crime; right?</p> <p>7 A. It doesn't appear to be, no, unless it's</p> <p>8 factual.</p> <p>9 Q. Okay. You see Tashi Farmer continued to resist.</p> <p>10 We see an arm come down. Do you know whose arm that is?</p> <p>11 Not by name, but is that a security officer from the</p> <p>12 Venetian, or is that a Metro officer at this point?</p> <p>13 We're at 2:45.</p> <p>14 A. Security.</p> <p>15 Q. Security officer was --</p> <p>16 A. According to -- according to this. I don't know</p> <p>17 whose it is.</p> <p>18 Q. According to the arrest report; right?</p> <p>19 A. Right.</p> <p>20 Q. We'll all stipulate that's not a Metro uniform,</p> <p>21 but that's neither here nor there. So you agree that if</p> <p>22 that is -- if that is Security Guard Infantino, that he</p> <p>23 did, in fact, attempt to grab hold of Tashi Farmer's arm;</p> <p>24 right?</p> <p>25 A. Well, he grabbed his arm. I don't know what he</p>
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<p>1 Q. See Officer Lopera's hand over the right side of</p> <p>2 Tashi Farmer's head?</p> <p>3 A. Right.</p> <p>4 Q. Attempt to gain control. Would you agree with</p> <p>5 that?</p> <p>6 A. Trying to gain control, yes.</p> <p>7 Q. I mean, I'm not saying he's doing a good job or</p> <p>8 an effective job, but that's what he's trying to do;</p> <p>9 right?</p> <p>10 A. Seems to be.</p> <p>11 Q. Could that have accounted for the lacerations</p> <p>12 and bruising that you read off the page on the left side</p> <p>13 of Tashi Farmer's face where his face is down next to the</p> <p>14 concrete?</p> <p>15 A. I don't know.</p> <p>16 Q. I mean, have you ever seen that in your</p> <p>17 experience?</p> <p>18 A. I've seen abrasions on -- from concrete, but I</p> <p>19 don't know if that would be attributed to that. That</p> <p>20 would be more a medical opinion.</p> <p>21 Q. So you -- can you tell whether -- the</p> <p>22 lacerations, the bruising that you read off and said</p> <p>23 these were his injuries on the left side of Tashi</p> <p>24 Farmer's face, can you tell whether those were from a</p> <p>25 hand strike or from the concrete?</p>	<p>1 was trying to do with it.</p> <p>2 Q. Well, his testimony is that he tried to grab his</p> <p>3 arm to assist in gaining compliance of the suspect.</p> <p>4 A. Okay.</p> <p>5 Q. Did you see how unsteady the body-worn camera is</p> <p>6 at this point?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Very difficult to watch; right?</p> <p>9 A. It is.</p> <p>10 Q. Does that imply to you that Tashi Farmer is</p> <p>11 actively resisting?</p> <p>12 A. It doesn't, one way or the other.</p> <p>13 Q. Okay. If he was complying, would Officer Lopera</p> <p>14 have been that shaky with his body-worn camera?</p> <p>15 A. Can you go back for me, please.</p> <p>16 Q. To how far?</p> <p>17 A. Like, 10 seconds. I just want to see that</p> <p>18 again.</p> <p>19 Q. That was -- that was a long way.</p> <p>20 A. That's good. Right there's fine.</p> <p>21 Q. Is that good?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. At this point, the body-worn camera gets</p> <p>24 occluded; right? Let's look at the arrest report, the</p> <p>25 timeline. So I think -- would you agree with me that at</p>

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<p>1 this point Ken Lopera has either started to apply a neck</p> <p>2 restraint because he's behind Tashi Farmer at that</p> <p>3 point --</p> <p>4 A. Appears to be.</p> <p>5 Q. Okay. What I'm going to do now is I want to</p> <p>6 switch the video to the merged video so that we can see</p> <p>7 from above, because, quite frankly, staring at a black</p> <p>8 screen doesn't help much; right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. A skinny...</p> <p>11 A. Wow, you served. Thank you for your service.</p> <p>12 Q. Yeah.</p> <p>13 A. Wow.</p> <p>14 Q. I practice, but I'm really not that good.</p> <p>15 A. Wow.</p> <p>16 Q. Hold on. Let me get back to -- so the merged</p> <p>17 video -- well, I don't want it that far -- so what I --</p> <p>18 but that's okay. What I want to do is I want to put it</p> <p>19 to where Ken -- you know, to be consistent, where Ken</p> <p>20 goes to the -- okay. So I want to initially focus on the</p> <p>21 left side here, the left side of the -- of the video,</p> <p>22 because I want to look at what you can tell, if anything,</p> <p>23 from this Venetian -- the building-mounted camera.</p> <p>24 So let's look at this. We'll just roll it from</p> <p>25 here. And what I want to do is I want to ask you this:</p>	<p>1 MR. SAYRE: 1:22 is from the -- the Venetian.</p> <p>2 MR. McNUTT: Well, 1:22 is from the merged video</p> <p>3 that's been produced in this case.</p> <p>4 MR. SAYRE: All right.</p> <p>5 Q. Okay. So from this video, can you tell --</p> <p>6 either one of them, can you tell if there's any pressure</p> <p>7 being applied to Tashi Farmer's neck or -- I mean, just</p> <p>8 strictly from the video?</p> <p>9 A. No.</p> <p>10 Q. And you -- can you tell if Ken Lopera has an</p> <p>11 LVNR or a rear naked choke or some other hold?</p> <p>12 A. No.</p> <p>13 Q. Or if he's just bear-hugging him?</p> <p>14 A. I can't tell.</p> <p>15 Q. Can't tell from this video; right?</p> <p>16 A. That's correct.</p> <p>17 Q. I believe that Sergeant Crumrine -- I think that</p> <p>18 bears out that at a minute 24, Sergeant Crumrine appears</p> <p>19 on scene or somewhere around there; right?</p> <p>20 A. Right.</p> <p>21 Q. Okay. Now, watch Sergeant Crumrine. What's he</p> <p>22 doing?</p> <p>23 A. Applying body weight.</p> <p>24 Q. Okay. And what's -- what are his hands doing?</p> <p>25 Is he trying to -- what's he trying to do to Tashi</p>
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<p>1 I want you to tell me at what time stamp you think Ken</p> <p>2 Lopera has put a neck restraint on Tashi Farmer. And</p> <p>3 then we'll ask some subsequent questions then. But take</p> <p>4 that initial time hack on it.</p> <p>5 So we agree that -- well, Ken just got occluded</p> <p>6 there, but that there are -- based on the two videos, at</p> <p>7 this point Ken is not in a neck restraint. We're at 54</p> <p>8 seconds on this video; right?</p> <p>9 A. Okay.</p> <p>10 Q. Well, you agree with that?</p> <p>11 A. I do.</p> <p>12 Q. Okay. We're at -- just for reference, we're at</p> <p>13 one minute, 15 seconds. Is Ken Lopera in a neck</p> <p>14 restraint at all yet?</p> <p>15 A. As of now, it doesn't appear to be.</p> <p>16 Q. Okay. Tell me when he's going?</p> <p>17 A. That's it. No, still no. Right there.</p> <p>18 Q. Now?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So some form of neck restraint is</p> <p>21 attempted at 1:22. You agree with that?</p> <p>22 A. Okay.</p> <p>23 Q. Yes or no?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay.</p>	<p>1 Farmer? Can you tell?</p> <p>2 A. I can't.</p> <p>3 Q. What should he be doing?</p> <p>4 A. What he should be doing is having him release</p> <p>5 that hold at that point and then get him on his stomach,</p> <p>6 now that he's there, and both put him in some handcuffs.</p> <p>7 Q. Okay. It's your expert opinion that he should</p> <p>8 not have secured the suspect at that point?</p> <p>9 A. There's no reason to choke him out to apply</p> <p>10 restraint at that point. Simply let him know he's there,</p> <p>11 roll him onto his stomach, have him release the hold, put</p> <p>12 the hands in the small of the back, and place handcuffs</p> <p>13 on him.</p> <p>14 Q. And if he -- if he's handcuffed, then obviously</p> <p>15 the hold can be released; right? I mean -- and what I'm</p> <p>16 asking is -- is -- does one necessarily have to come</p> <p>17 before the other?</p> <p>18 A. It does. You need to put him on his stomach.</p> <p>19 The problem here is -- that we can see is that there's no</p> <p>20 coordinated effort. I mentioned this in the first part</p> <p>21 of the deposition. There's no communication. There's</p> <p>22 obviously, clearly no leadership. There's no one taking</p> <p>23 control there of letting Lopera know, "I'm here with you.</p> <p>24 Release. Let's get him on his stomach."</p> <p>25 He can't do that in a position they're in right</p>

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<p>1 now. As you can see, he's trying to do some unique thing</p> <p>2 of trying to -- maybe trying to control his arms, only</p> <p>3 fighting against the very thing that Officer Lopera is</p> <p>4 trying to do.</p> <p>5 Q. Okay. And so you were saying Crumrine is trying</p> <p>6 to control his arms, which is fighting against what</p> <p>7 Officer Lopera is trying to do? Was that --</p> <p>8 A. It seems there's no coordinated effort on what</p> <p>9 they -- what's occurring right now on video.</p> <p>10 Q. I just want to make sure I understood. Okay.</p> <p>11 So they're still rolling around, and he's asking, "Is he</p> <p>12 out yet?" Does that change your perspective about what</p> <p>13 Ken knew or should have known at that point?</p> <p>14 A. I don't see him rolling around. Maybe you can</p> <p>15 show me where he's rolling around.</p> <p>16 Q. Sure. I'll just back it up. Right there.</p> <p>17 A. Only moving I see is Crumrine trying to do some</p> <p>18 unique thing with his arm. I don't see Mr. Farmer moving</p> <p>19 or rolling around anywhere.</p> <p>20 Q. So now how many Metro officers are there at this</p> <p>21 point, three?</p> <p>22 A. Appears to be, yes.</p> <p>23 Q. Okay.</p> <p>24 A. Three total.</p> <p>25 Q. If Tashi Farmer was not resisting at this point,</p>	<p>1 have -- would be more qualified than I am to look at</p> <p>2 that, like Sergeant Bland, that's going to look at that</p> <p>3 and see if that's something that -- based on his</p> <p>4 training. I can't tell.</p> <p>5 Q. I actually don't think I have any more questions</p> <p>6 on this. Let me just check one thing. What are we at,</p> <p>7 2:08? We're good on that.</p> <p>8 MR. McNUTT: Why don't we take a five-minute</p> <p>9 break, and I will wrap up.</p> <p>10 MR. SAYRE: Sure.</p> <p>11 THE VIDEOGRAPHER: The time is approximately</p> <p>12 2:20 p.m. We are going off the record.</p> <p>13 (Whereupon, a recess was taken at this time.)</p> <p>14 (Defendants' Exhibit 3, Plts Initial Disclosures</p> <p>15 000056 through 000057 and LVMPD 1469, was marked for</p> <p>16 identification as of this date.)</p> <p>17 THE VIDEOGRAPHER: The time is 2:30 p.m. We are</p> <p>18 back on the record.</p> <p>19 BY MR. McNUTT:</p> <p>20 Q. Mr. DeFoe, I've handed you -- or the court</p> <p>21 reporter's handed you a couple of documents which we're</p> <p>22 cumulatively going to mark Exhibit 3. Please let me know</p> <p>23 when you've had a chance to review those.</p> <p>24 A. I'm ready.</p> <p>25 Q. Okay. Have you seen these documents before, the</p>
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<p>1 three guys to arrest or put handcuffs on one guy would be</p> <p>2 a pretty simple task; right?</p> <p>3 A. Well, I'm not saying anything's simple. I'm</p> <p>4 saying it's reasonable, and I think, as I mentioned --</p> <p>5 Q. So can you tell from this angle of any --</p> <p>6 anything about the hold, anything you can tell what's</p> <p>7 going on?</p> <p>8 A. He appears to be -- obviously, appears to be on</p> <p>9 in his back. He appears to still have the hold in, and</p> <p>10 then the --</p> <p>11 Q. Meaning the encircling arm around Tashi Farmer?</p> <p>12 A. And once again, I don't know how much pressure</p> <p>13 is being -- being applied. He earlier asked -- on, "Is</p> <p>14 he out?" So he would assume if he's out, he would apply</p> <p>15 pressure in the interim, because he wouldn't assume he's</p> <p>16 out if he wasn't -- had not applied pressure. I just see</p> <p>17 them in one big group, and I really can't discern who's</p> <p>18 doing what.</p> <p>19 Q. Could an objective, reasonable investigator</p> <p>20 determine that this is a rear naked choke with certainty</p> <p>21 versus a lateral vascular neck restraint with certainty?</p> <p>22 A. Based on that frame, what you're showing me</p> <p>23 right now?</p> <p>24 Q. Based upon this video I've showed you.</p> <p>25 A. I can't. Once again, there's people that</p>	<p>1 September 21, 2017, For Immediate Release and then the</p> <p>2 11/28/17 internal memorandum?</p> <p>3 A. I believe just the -- the announcement on</p> <p>4 September 21st.</p> <p>5 Q. Okay. And you recognize this as the</p> <p>6 announcement where they're changing -- that the LVNR will</p> <p>7 no longer be categorized as a low-level option in the</p> <p>8 updated policy; right?</p> <p>9 A. Yes.</p> <p>10 Q. And are you rendering an expert opinion that</p> <p>11 today -- and this is a yes or no -- as to whether or not</p> <p>12 it never should have been a low-level force option to</p> <p>13 officers?</p> <p>14 A. No.</p> <p>15 Q. You're not rendering that opinion today?</p> <p>16 A. No.</p> <p>17 Q. That -- that has nothing to do with your</p> <p>18 opinions rendered today?</p> <p>19 A. No.</p> <p>20 Q. Okay. And you have not seen, if I understand</p> <p>21 correctly, the 11/28/17 internal memorandum which appears</p> <p>22 to justify or provide some reasoning behind the change?</p> <p>23 A. I've not seen that, no.</p> <p>24 Q. Okay. But now that you've seen it, does it</p> <p>25 impact your report, one way or another?</p>

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<p>1 A. No.</p> <p>2 Q. Okay. I'm not pretending you're a medical</p> <p>3 expert; I know you're not either. But to the extent you</p> <p>4 can answer the following question, please do.</p> <p>5 Do you have any knowledge, experience, or</p> <p>6 training which would indicate to you or would give you an</p> <p>7 understanding of a difference between a full carotid, a</p> <p>8 carotid choke, which was a phrase that has been used</p> <p>9 today, versus a rear naked choke versus an LVNR, in terms</p> <p>10 of practical effect on the subject?</p> <p>11 A. No.</p> <p>12 Q. Okay. They're all blood chokes, and they all</p> <p>13 can render an individual unconscious?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And you agree with me, the timing in</p> <p>16 which the individual can be rendered unconscious depends</p> <p>17 on the levels of resistance, the suspect's physical</p> <p>18 fitness, the officer's physical fitness, and things of</p> <p>19 that nature?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. After we reviewed those videos a few</p> <p>22 minutes ago, do you agree with me that there was</p> <p>23 resistance by Tashi Farmer when Ken Lopera was attempting</p> <p>24 to gain compliance from him?</p> <p>25 A. At what point?</p>	<p>1 retirement.</p> <p>2 Q. Okay. Does any part of your consulting involve</p> <p>3 policy drafting for municipalities?</p> <p>4 A. No.</p> <p>5 Q. In your consulting work, do you do both</p> <p>6 plaintiff and defense or just plaintiff?</p> <p>7 A. Both.</p> <p>8 Q. Do you currently have any open defense cases?</p> <p>9 A. For premise liability and security matters, I'm</p> <p>10 at about 50/50. For plaintiff matters involving</p> <p>11 municipalities and government entities, I'm at 100</p> <p>12 percent plaintiff.</p> <p>13 Q. Okay. So for police misconduct cases, you're</p> <p>14 currently 100 percent plaintiff?</p> <p>15 A. That's correct.</p> <p>16 Q. Do any of your current cases involve the use of</p> <p>17 a neck restraint, besides this one?</p> <p>18 A. No.</p> <p>19 Q. Have you ever testified in a trial involving a</p> <p>20 use of force case that involved an LVNR or a -- another</p> <p>21 neck restraint?</p> <p>22 A. No.</p> <p>23 Q. Have you ever testified in a trial that involved</p> <p>24 a duty to intervene issue?</p> <p>25 A. Yes.</p>
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<p>1 Q. At any point. Just a general question.</p> <p>2 A. Yes. At one point I did see resistance.</p> <p>3 Q. Okay.</p> <p>4 MR. McNUTT: I may have some follow-up, but what</p> <p>5 I'm going to do now is turn the witness over to Craig</p> <p>6 Anderson.</p> <p>7 Do you want to switch seats?</p> <p>8 THE VIDEOGRAPHER: He has a microphone.</p> <p>9 MR. McNUTT: Okay. And then if I have any</p> <p>10 follow-up, they'll be --</p> <p>11 THE WITNESS: Yes, sir.</p> <p>12 MR. McNUTT: -- very, very brief.</p> <p>13 EXAMINATION BY</p> <p>14 MR. ANDERSON:</p> <p>15 Q. Mr. DeFoe, as I've been introduced, my name is</p> <p>16 Craig Anderson, and I represent the police department,</p> <p>17 Crumrine, Tran, and Flores in this lawsuit.</p> <p>18 Do you understand that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. In your consulting work, do you ever do</p> <p>21 training of departments?</p> <p>22 A. I've been vetted with the State Department to</p> <p>23 train out of country for out-of-country departments.</p> <p>24 I've got a couple trips that are pending to the Mideast,</p> <p>25 but in way of municipalities, no, other -- not since my</p>	<p>1 Q. Which case was that?</p> <p>2 A. Oh, in trial. I need to look. I don't know --</p> <p>3 in fact, I'm retracting. I don't know if it was actually</p> <p>4 a trial. I know by way of deposition. You guys have my</p> <p>5 trial testimony?</p> <p>6 Q. Yeah.</p> <p>7 A. I just need to take a look at it if I can.</p> <p>8 MR. SAYRE: Here (handing).</p> <p>9 A. There's one current. I think there's -- let me</p> <p>10 see. I believe the -- the Trial Federal Court on --</p> <p>11 which is No. 50 on the -- on my testimony, August 2nd,</p> <p>12 the Cindy Michelle Hahn matter versus City of Carlsbad, I</p> <p>13 believe that had some duty to intervene components to it.</p> <p>14 Q. Okay.</p> <p>15 A. It was -- it was a -- just a moderate use of</p> <p>16 force, didn't involve a -- any neck restraint.</p> <p>17 Q. Okay.</p> <p>18 A. No, other than that.</p> <p>19 Q. Okay. I notice that in your report, there's</p> <p>20 various cites to Supreme Court and -- and other case law.</p> <p>21 As part of your practice, do you attempt to keep up on</p> <p>22 recent Supreme Court case law?</p> <p>23 A. I try to.</p> <p>24 Q. Do you review Ninth Circuit decisions?</p> <p>25 A. Yes.</p>

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<p>1 Q. Okay.</p> <p>2 A. Some.</p> <p>3 Q. Do you subscribe to any journals that keep you</p> <p>4 abreast of changes in police misconduct law?</p> <p>5 A. AELE.</p> <p>6 Q. In your report, there -- there's references to</p> <p>7 policies and policy violations. Do you understand the</p> <p>8 distinction between a policy violation and a</p> <p>9 constitutional violation?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Would you agree to me that a department's</p> <p>12 policies can exceed the Constitution?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So the fact that an officer violates a</p> <p>15 policy does not automatically mean that that officer has</p> <p>16 also violated the Constitution?</p> <p>17 A. That's correct.</p> <p>18 Q. So let me see if I can clean some stuff up here.</p> <p>19 With respect to the Metropolitan Police Department, are</p> <p>20 you rendering any opinions that their written policies</p> <p>21 are improper in this case?</p> <p>22 A. No.</p> <p>23 Q. Did you agree with the majority of the written</p> <p>24 policies you read?</p> <p>25 A. Yes.</p>	<p>1 behavior?</p> <p>2 A. I don't know if anything surfaced regarding --</p> <p>3 or have I read anything regarding the duty to intercede</p> <p>4 involving Sergeant or Officer Crumrine, Flores, or Tran,</p> <p>5 as it relates to the duty to intercede. I saw that there</p> <p>6 was issues regarding not wearing body -- body cameras,</p> <p>7 and there was some comments from the board regarding, you</p> <p>8 know, separating by Officer Lif. But I didn't see that</p> <p>9 that was addressed by the Las Vegas Metropolitan Police</p> <p>10 Department.</p> <p>11 Q. Okay. And you would have liked to -- you</p> <p>12 believe that should have been addressed?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. Then we'll talk about it a little later.</p> <p>15 Now, with respect to your criticisms in this case,</p> <p>16 starting with the body-worn cameras, that was a violation</p> <p>17 of internal Las Vegas Metropolitan Police Department</p> <p>18 policy; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Do you believe that there was a constitutional</p> <p>21 right held by Tashi Farmer that the officers turn on</p> <p>22 their body cameras?</p> <p>23 A. Constitutional right?</p> <p>24 Q. Yes.</p> <p>25 A. No.</p>
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<p>1 Q. Okay. Did they appear to be within the</p> <p>2 standards set forth by the leading law enforcement</p> <p>3 agencies?</p> <p>4 A. Yes.</p> <p>5 Q. Are you rendering any opinions in this case</p> <p>6 regarding the Las Vegas Metropolitan Police Department's</p> <p>7 training, that it was sub -- substandard?</p> <p>8 A. No.</p> <p>9 Q. Did you agree with the training that you've seen</p> <p>10 in this case?</p> <p>11 A. Yes.</p> <p>12 Q. You also reviewed portions or all of Las Vegas</p> <p>13 Metropolitan Police Department's internal investigation</p> <p>14 into the Ken Lopera matter; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Do you intend to render any negative</p> <p>17 criticisms of the internal investigation of the police</p> <p>18 department?</p> <p>19 A. No.</p> <p>20 Q. Did you agree with the police department's</p> <p>21 internal investigation?</p> <p>22 A. Yes.</p> <p>23 Q. Do you intend to offer any opinions at trial</p> <p>24 regarding ratification in this case, that they ratified</p> <p>25 any of the -- improperly ratified any of the officers'</p>	<p>1 Q. And you would agree that the officers' failures</p> <p>2 to turn on their body cameras did not, in any way,</p> <p>3 contribute to Mr. Farmer's death; is that fair?</p> <p>4 A. That's correct.</p> <p>5 Q. And then you also have some opinions in</p> <p>6 paragraph 14 on Sergeant Crumrine and his handling of the</p> <p>7 scene.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now, all of your opinions with respect to</p> <p>10 Sergeant Crumrine's handling of the scene involve his</p> <p>11 actions after Mr. Farmer was put in handcuffs; is that</p> <p>12 correct?</p> <p>13 A. No, from the time that he -- from the time of</p> <p>14 which he arrived up until the time that Mr. Farmer was --</p> <p>15 was handcuffed.</p> <p>16 Q. Okay. And I understand your duty to intervene</p> <p>17 allegations against Mr. Crumrine -- Officer Crumrine. On</p> <p>18 Page 24 of your report, under paragraph 14, you state,</p> <p>19 "It is my opinion based on my review of the facts in this</p> <p>20 matter, LVMPD Sergeant Travis Crumrine failed to take</p> <p>21 Command and Control of the scene."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And then underneath that paragraph, you have</p> <p>25 bullet points; is that correct?</p>

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<p>1 A. Yes.</p> <p>2 Q. And all of those bullet points involve actions</p> <p>3 he took after Farmer was handcuffed; is that fair?</p> <p>4 A. Those do, yes. Those -- those are respective --</p> <p>5 No. 14 is respective to what he -- what he did after the</p> <p>6 fact, in the way of scene management and command and</p> <p>7 control issues.</p> <p>8 Q. Okay. And again, those are criticisms of</p> <p>9 Officer Crumrine violating internal policies and not the</p> <p>10 Constitution; is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. And you would agree that those actions he took</p> <p>13 after the handcuffing, they didn't contribute in any way</p> <p>14 a to Mr. Farmer's death?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. So let's move on to the duty to</p> <p>17 intervene. And I know that Mr. McNutt asked you a</p> <p>18 definition, but can you define for me again what you</p> <p>19 consider to be "intervention."</p> <p>20 A. Coming and taking some type of action or</p> <p>21 directing some type of action for behavior that is either</p> <p>22 deemed to be inappropriate or excessive or unreasonable,</p> <p>23 based on the set of facts.</p> <p>24 Q. And according to your report, intervention can</p> <p>25 take form in one or more of the following ways: strongly</p>	<p>1 Q. Now, are you aware of any legal authority that</p> <p>2 says that an officer has a duty to physically intervene</p> <p>3 when they see an unconstitutional act taking place?</p> <p>4 A. Once again, I don't know if either of those two</p> <p>5 cases I just mentioned, Koon or Cunningham, specifically</p> <p>6 outline if there's a -- necessary to physically intervene</p> <p>7 or not.</p> <p>8 Q. Okay. Now, just if you have, have you ever</p> <p>9 heard -- let me back up.</p> <p>10 Have you ever received any training in the duty</p> <p>11 to intervene?</p> <p>12 A. Yes.</p> <p>13 Q. And where did you receive that training?</p> <p>14 A. In the police academy, I believe. Obviously,</p> <p>15 through field training officer update when I was a field</p> <p>16 training officer. When I went to basic detective school,</p> <p>17 and when I went to basic sergeant school, and then</p> <p>18 intermittently throughout my career with LAPD.</p> <p>19 Q. Okay. Have you ever heard of the duty to</p> <p>20 intervene also being called bystander liability?</p> <p>21 A. Yes.</p> <p>22 Q. How do you define the word "bystander"?</p> <p>23 A. Someone who is in a position to see what's</p> <p>24 transpiring at that time, someone who -- I think</p> <p>25 bystander's a little bit broad-based, where it doesn't</p>
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<p>1 caution the other officer, physically restrain the</p> <p>2 officer, and immediately report the incident; is that</p> <p>3 fair?</p> <p>4 A. Yes.</p> <p>5 Q. And where did you get those three criteria?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did you just make them up or --</p> <p>8 A. I think I may have, or they may come from</p> <p>9 California POST Training.</p> <p>10 Q. Okay. Are you aware of any Supreme Court or</p> <p>11 Ninth Circuit case law that sets forth those three forms</p> <p>12 of intervention?</p> <p>13 A. I don't know if the Koon matter or Cunningham</p> <p>14 matter specifically discussed those three or not.</p> <p>15 Q. Okay. And when you use the term, and I quote,</p> <p>16 strongly caution, does that mean give an order?</p> <p>17 A. It would be, yes.</p> <p>18 Q. Okay. So if an officer gives an order, he is</p> <p>19 intervening?</p> <p>20 A. He could be if that order is directing somebody</p> <p>21 to intervene, if that -- if the order is to -- to stop</p> <p>22 your behavior.</p> <p>23 Q. So giving an order to someone to stop their</p> <p>24 behavior could be a form of intervention.</p> <p>25 A. Sure.</p>	<p>1 specific -- discuss -- discuss, you know,</p> <p>2 superior-subordinate relationships. I think it's</p> <p>3 primarily just based on someone who's present when</p> <p>4 something transpires.</p> <p>5 Q. If I could get you to turn to Page 9 of your</p> <p>6 report which is the timeline we've been going over.</p> <p>7 Are you there?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. We've been over this a few times, but</p> <p>10 according to the report, Officer Lopera placed his arms</p> <p>11 in Mr. Farmer's neck area at 2:58.</p> <p>12 Do you agree with that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And about three seconds later, Sergeant</p> <p>15 Crumrine arrived on scene. Do you agree with that?</p> <p>16 A. Yes.</p> <p>17 Q. Now, when Crumrine arrived, based upon your</p> <p>18 review of the record, had all of the tasings and punches</p> <p>19 already occurred?</p> <p>20 A. It appears to be, yes. There's a lot I can't</p> <p>21 see from the video. It doesn't depict if there were</p> <p>22 additional strikes by anybody.</p> <p>23 Q. Okay. But do -- Officer Crumrine testified</p> <p>24 that, when he arrived, he didn't see any punches or</p> <p>25 tasings.</p>

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<p>1 Would you have any reason to disagree with that?</p> <p>2 A. I'm not making credibility determinations.</p> <p>3 Q. Okay. So would you agree with me that when</p> <p>4 Officer Crumrine arrived, what he saw was Mr. Brown and</p> <p>5 Mr. Lopera on the ground with Mr. Lopera's arms around</p> <p>6 Mr. Farmer's neck area?</p> <p>7 A. Yeah, and some type of restraint hold. Appears</p> <p>8 to be.</p> <p>9 Q. Based upon your review of the record, what</p> <p>10 information did Officer Crumrine read -- receive before</p> <p>11 he arrived on scene?</p> <p>12 A. I don't recall. I know that they -- he had put</p> <p>13 out, "Give me a red." So emergency help call would be --</p> <p>14 I think he would know that it was something related to</p> <p>15 help.</p> <p>16 Q. So what he knew upon arrival was that there was</p> <p>17 an officer in some sort of trouble, at least the officer</p> <p>18 was representing that.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Would you agree that that's very little</p> <p>21 information about what had occurred prior?</p> <p>22 A. It is.</p> <p>23 Q. Okay. Would you agree that Officer Crumrine</p> <p>24 encountered what police would call a dynamic situation?</p> <p>25 A. Yes. I mean, it was evolving when he was still</p>	<p>1 they -- when they arrive on such a dynamic scene, their</p> <p>2 first task is to make the scene safe; is that fair?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And the best way to make the scene safe</p> <p>5 is to get the -- the suspect into custody.</p> <p>6 A. That's fair.</p> <p>7 Q. Okay. Now, when Officer Crumrine arrived, he</p> <p>8 shouted an order as he was joining the fracas, saying,</p> <p>9 "Get your fucking hands behind your back"; is that fair?</p> <p>10 A. That's correct.</p> <p>11 Q. And that was directed at Mr. Farmer, do you</p> <p>12 believe?</p> <p>13 A. I'm hoping, yes.</p> <p>14 Q. Okay. And based upon your review of the record,</p> <p>15 did Mr. -- did Officer Crumrine immediately go hands-on</p> <p>16 and become involved in the struggle?</p> <p>17 A. Couldn't really tell what he was doing. He was</p> <p>18 kind of, like, bending over, and looked like he tried to</p> <p>19 grab and really -- is -- it didn't -- couldn't really</p> <p>20 tell what he was trying to do.</p> <p>21 Q. Okay. But he became involved in it physically?</p> <p>22 A. Appeared to be, yes.</p> <p>23 Q. Okay. He didn't stand off to the side and watch</p> <p>24 for any period of time?</p> <p>25 A. Not according to the video I watched, no.</p>
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<p>1 there.</p> <p>2 Q. Okay. And when an officer encounters a dynamic</p> <p>3 situation like this with very little background</p> <p>4 information, what should their initial focus be when they</p> <p>5 get on scene?</p> <p>6 A. Officer and community safety.</p> <p>7 Q. Okay. Now are they -- is -- was Officer</p> <p>8 Crumrine entitled to assume that Officer Lopera had acted</p> <p>9 constitutionally and within policy up to that point?</p> <p>10 A. Wouldn't know, one way or the other.</p> <p>11 Q. But an officer is allowed to assume that other</p> <p>12 officers have acted within policy when they arrive?</p> <p>13 A. That's -- that's fair.</p> <p>14 Q. Would it be unreasonable -- was it unreasonable</p> <p>15 for Officer Crumrine when he arrived for his first task</p> <p>16 to be to attempt to get Mr. Farmer into handcuffs?</p> <p>17 A. No. I think that was reasonable.</p> <p>18 Q. In fact, that's what training would tell you</p> <p>19 do; is that fair?</p> <p>20 A. That's correct.</p> <p>21 Q. So when Officer Crumrine arrived, his initial</p> <p>22 focus was to get Mr. Farmer into handcuffs, and that</p> <p>23 would be reasonable; correct?</p> <p>24 A. Yeah. I think that would be reasonable.</p> <p>25 Q. Okay. Because officers are trained that when</p>	<p>1 Q. Okay. Did you see any actions by Officer</p> <p>2 Crumrine that you would consider to be passive?</p> <p>3 A. Passive wouldn't be the word. I think</p> <p>4 ineffective would be a better way to determine it.</p> <p>5 Q. And I understand that, but he was actively</p> <p>6 involved in the struggle to get Mr. Brown into handcuffs.</p> <p>7 Would you agree with that?</p> <p>8 A. I think there was an attempt to get Mr. --</p> <p>9 Mr. Brown into handcuffs -- excuse me, Mr. Farmer into</p> <p>10 handcuffs.</p> <p>11 Q. And 20 seconds after Officer Crumrine arrived,</p> <p>12 he gave Lopera the order to, "Let him go, Ken"; is that</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And I know that your report and Metro's report</p> <p>16 all says that Officer Tran said that. Do -- do you have</p> <p>17 a problem or a disagreement, because everyone has</p> <p>18 testified to this, that that was actually Sergeant</p> <p>19 Crumrine that said, "Let him go"?</p> <p>20 THE REPORTER: Sergeant who?</p> <p>21 MR. ANDERSON: Crumrine.</p> <p>22 A. I don't understand your question.</p> <p>23 Q. Okay. It was a horrible question. According to</p> <p>24 your report and Metro's arrest report, Officer Tran</p> <p>25 arrived and said, "Let him go, Ken," at 3:25.</p>

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<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you have any disagreement with changing that</p> <p>4 to Sergeant Crumrine based upon the deposition</p> <p>5 testimonies you've read and the other evidence you've</p> <p>6 seen?</p> <p>7 A. No, I do not.</p> <p>8 Q. Okay. And immediately after Sergeant Crumrine</p> <p>9 said, "Let him go, Ken," Officer Lopera asked, "Are you</p> <p>10 sure?" And I'll tell you again; it's Sergeant Crumrine</p> <p>11 that replied, "Yeah."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And during this exchange, Crumrine was</p> <p>15 hands-on, attempting to assist with the handcuffing; is</p> <p>16 that fair?</p> <p>17 A. I don't want to say hands-on assisting. It</p> <p>18 looked like he was trying to do something. I don't know</p> <p>19 what that was.</p> <p>20 Q. Okay. Now, when Crumrine gave Mr. -- gave</p> <p>21 Officer Lopera the order to let him go, would it be</p> <p>22 reasonable for Crumrine to assume that Officer Lopera</p> <p>23 would follow that order?</p> <p>24 A. Yes.</p> <p>25 Q. And with Officer Crumrine at Mr. Brown's feet,</p>	<p>1 I think the intervention is -- is that you see</p> <p>2 something that's outside what would be reasonable and now</p> <p>3 you're intervening by, you know, giving verbal commands</p> <p>4 or physically restraining the person.</p> <p>5 Q. Okay. So I -- let me back up. So you would</p> <p>6 agree with me, based on your prior testimony, that when</p> <p>7 Sergeant Crumrine arrived on scene, he could assume that</p> <p>8 Officer Lopera's neck restraint was reasonable at that</p> <p>9 moment, the moment he arrived, because he has no</p> <p>10 preexisting knowledge as to what happened.</p> <p>11 A. He wouldn't know. Unless there's information</p> <p>12 that he received on the way that I did not read in the</p> <p>13 record.</p> <p>14 Q. Okay. And so he would have no reason to know</p> <p>15 that that was excessive force at that time?</p> <p>16 A. That's fair.</p> <p>17 Q. Okay. He then joins the struggle and in 24</p> <p>18 seconds gives an order to "Let him go, Ken," which is a</p> <p>19 form of intervention; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And he is entitled to believe that his officer</p> <p>22 will follow that command; is that correct?</p> <p>23 A. Officer should follow the command, yes.</p> <p>24 Q. Okay. So from that point forward, Officer --</p> <p>25 Sergeant Crumrine was justified in believing that Officer</p>
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<p>1 would Mr. -- would Officer Crumrine be in a position to</p> <p>2 tell how much pressure was being applied to Mr. Brown's</p> <p>3 neck?</p> <p>4 A. He may be if he could see what his -- you know,</p> <p>5 his face and be able to see. You know, he should be able</p> <p>6 to see from that -- from that viewpoint.</p> <p>7 Q. Now, so do you agree that when Officer -- when</p> <p>8 Sergeant Crumrine gave the order to, "Let him go, Ken,"</p> <p>9 that he intervened?</p> <p>10 A. It's one phase of intervention, yes.</p> <p>11 Q. Now, do you consider Sergeant Crumrine becoming</p> <p>12 involved in the struggle -- although I know you disagree</p> <p>13 with -- with what he did, but the fact that he became</p> <p>14 involved, is that intervention?</p> <p>15 A. Not as -- not regarding the use of excessive</p> <p>16 force, but the fact that you're assisting, he's assisting</p> <p>17 the officer. So there's an intervention there, but it's</p> <p>18 not intervention as relates to the duty to intervene.</p> <p>19 Q. Okay. Maybe I didn't follow you. Can you</p> <p>20 explain what you mean by --</p> <p>21 A. Sure. I mean if I'm effecting -- helping you</p> <p>22 effect a handcuffing technique or take someone into</p> <p>23 custody, I'm assisting you with that handcuffing. I</p> <p>24 wouldn't use the word "intervention" at that time, as it</p> <p>25 relates to the facts in this case.</p>	<p>1 Lopera had at least loosened the hold; is that fair?</p> <p>2 A. I don't know. I -- I don't know if he's</p> <p>3 monitoring the hold or monitoring the pressure put on by</p> <p>4 the hold, so I don't know.</p> <p>5 Q. Okay. But you can see from the video that</p> <p>6 Sergeant Crumrine remains actively involved in assisting</p> <p>7 with getting him into custody.</p> <p>8 A. He's there, yes.</p> <p>9 Q. So with respect to Sergeant Crumrine, what more</p> <p>10 do you think he should have done after he gave the order</p> <p>11 to "Let him go, Ken" before handcuffing was complete?</p> <p>12 A. Take -- take the hold off of him. The minute --</p> <p>13 the moment that Officer Lopera did not remove the hold,</p> <p>14 any form of hold around the neck at that point, he should</p> <p>15 have removed that hold himself if he -- if he did not --</p> <p>16 if Officer Lopera did not comply with his request or</p> <p>17 order.</p> <p>18 Q. Okay. So he should have physically removed his</p> <p>19 arms?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. But you testified that Sergeant Crumrine</p> <p>22 would be justified in believing that Ken had loosened the</p> <p>23 hold based upon his order, that he had ceased applying</p> <p>24 pressure. So is that correct?</p> <p>25 A. I don't believe I -- I testified to that.</p>

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<p>1 Q. Okay. You testified that Sergeant Crumrine 2 would be justified in believing that Officer Lopera 3 followed his command. 4 A. Well, no. I -- I -- he's standing right there, 5 so there's no -- he either followed or he didn't, he let 6 go of the hold or he didn't. He's not -- he's not doing 7 it from any real distance; he's right about there by his 8 feet. So the minute that -- or the second that he told 9 him to let go and he didn't let go, he should have 10 intervened and -- and forcibly removed his arms if he 11 needed to. 12 Q. Okay. So when you -- so when -- when Sergeant 13 Crumrine told Officer Lopera, "Let him go, Ken," is it 14 your testimony that Officer Lopera should have spread his 15 arms to the side and released any touching of Mr. Farmer? 16 A. As I mentioned, when Sergeant Crumrine arrived, 17 he should have assisted Officer Lopera by communicating 18 with him and letting him know, "We're going to put you on 19 your stomach. We're going to put him on the stomach. 20 Let it go. Go ahead and -- we're going to go ahead and 21 handcuff him." 22 Based on my review of the facts, that didn't 23 happen. And -- and then once he gave him the order to 24 let him go, he should have -- at that point, he's -- he 25 must have told him to let him go because either he</p>	<p>1 Q. At the point after he says, "Let him go, Ken." 2 The focus is still to get Mr. Farmer into handcuffs. 3 A. I believe so, yes. 4 Q. And so we're kind of going around here, but 5 Sergeant Crumrine was justified in believing that Officer 6 Lopera could have released the hold but kept his arms in 7 the neck area, but released any pressure on the neck 8 which we've established that would be using no force? 9 A. If he could see that there was no force being 10 applied, then there would -- at that point, just look to 11 effect the handcuffing technique, if he could see that. 12 Q. Okay. And we don't know whether Sergeant 13 Crumrine could see that or not? 14 A. Not that I read in the record. 15 Q. So in your opinion, would it be a good police 16 practice for Sergeant Crumrine, who -- do you agree with 17 me? -- is at Mr. Farmer's feet, doing something? 18 A. Well, the feet aren't the issue right now. We 19 need to get him handcuffed, so -- 20 Q. I just want to get him in the location. You 21 would agree with me that Sergeant Crumrine is at the 22 feet -- 23 A. Yes. 24 Q. -- when he gives that order? Okay. 25 So you think it would be a good police practice</p>
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<p>1 believed it was excessive or Mr. Farmer was in -- was, 2 you know, in dire straits at that point. I don't know 3 what he saw at that time. But if he needed to, make 4 him -- force him to let go of that hold. 5 Q. Okay. But Sergeant Crumrine said, "Let him go, 6 Ken," and at that point he was justified in believing 7 that Officer Lopera would follow that command; correct? 8 A. Yes, but he didn't follow the command. 9 Q. Okay. But Officer Lopera could have followed 10 the command by releasing pressure on the neck and just 11 keeping his arms in the neck area; is that fair? 12 A. He could have, if -- if -- once again, if he's 13 monitoring him to see if, in fact, that pressure's on the 14 neck and, in fact, that Mr. Farmer is in distress, all of 15 that. But still, based on that, you're going to want to 16 at least get him out of that hold if you think he's out 17 or he's unconscious, whatever it is, and, obviously, 18 render some type of aid. 19 Q. Okay. But first you'd want Mr. Farmer 20 handcuffed; is that correct? 21 A. That's correct. 22 Q. And that's what the officers were doing, was 23 attempting to get Mr. Farmer into handcuffs; is that 24 correct? 25 A. At what point?</p>	<p>1 to leave the feet of an unrestrained suspect and come up 2 and check the pressure being applied to the neck? 3 A. I think we'd want to get him on his stomach, get 4 the -- the hold off of Mr. Farmer, and get him in 5 handcuffs without delay. 6 Q. Yes. And so the most important thing at this 7 point in time is to get Mr. Farmer in the handcuffs? 8 A. That's correct. 9 Q. Okay. And when Flores and Tran arrive, 10 Mr. Farmer was still not in handcuffs; is that fair? 11 A. That's right. 12 Q. And they arrive within a few seconds of Sergeant 13 Crumrine arriving. 14 A. That's correct. 15 Q. And similar to my questioning regarding 16 Officer -- or Sergeant Crumrine, when Tran and Flores 17 arrived, all the tasing and punches had already occurred? 18 A. Appeared to be, yes. 19 Q. Yeah. There's nothing in the record that they 20 witnessed any of that; is that fair? 21 A. That's fair. 22 Q. So when Tran and Flores arrived, what they saw 23 was Mr. Brown and Lopera on the ground with Sergeant 24 Crumrine somewhere around Mr. Brown's feet. 25 A. Yes.</p>

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<p>1 Q. And similar to Sergeant Crumrine, both Tran and</p> <p>2 Flores had very little information beyond the fact that a</p> <p>3 code red was called prior to their arrival; is that fair?</p> <p>4 A. Yes.</p> <p>5 Q. So when they arrived, they could also reasonably</p> <p>6 assume that all of the actions taken up to the point of</p> <p>7 their arrival were constitutional and within policy?</p> <p>8 A. Yes.</p> <p>9 Q. And you would agree, similar to Sergeant</p> <p>10 Crumrine, when they arrived, their initial focus would be</p> <p>11 to get Mr. Brown into handcuffs.</p> <p>12 A. That's correct.</p> <p>13 Q. And when Officers Tran and Flores arrived, they</p> <p>14 also immediately went hands-on in the situation.</p> <p>15 A. They appear to be, yes.</p> <p>16 Q. Okay. Did you see in the video either Officer</p> <p>17 Flores or Tran standing around or watching for any period</p> <p>18 of time prior to handcuffing?</p> <p>19 A. No, not that I recall.</p> <p>20 Q. And from the moment Officers Tran and Flores</p> <p>21 arrived, their focus was to get Mr. Brown in handcuffs.</p> <p>22 Is that your understanding of the record?</p> <p>23 A. Yes.</p> <p>24 Q. And do you agree or disagree that attempting to</p> <p>25 get a suspect into handcuffs is a form of intervention?</p>	<p>1 A. That's right.</p> <p>2 Q. And that's what these two officers did.</p> <p>3 A. Yes.</p> <p>4 Q. And these officers would not have been able to</p> <p>5 tell what pressure, if any, was being applied to</p> <p>6 Mr. Brown's neck?</p> <p>7 A. Yeah, but even with -- Flores stated with four</p> <p>8 officers present, they could take Mr. Farmer into</p> <p>9 custody, and therefore it was unnecessary for Officer</p> <p>10 Lopera to continue his hold once there were four</p> <p>11 officers. And that's on his deposition, Page 36.</p> <p>12 Q. Yes. What he testified was that there were four</p> <p>13 officers there. It would not be appropriate to continue</p> <p>14 to apply pressure to Mr. Brown's neck; is that correct?</p> <p>15 A. He didn't say, "pressure." He said, "continue</p> <p>16 his hold."</p> <p>17 Q. But did -- okay. So maybe I misunderstood. Did</p> <p>18 we agree that a hold involves some pressure to the neck?</p> <p>19 A. It does, but once again, if you're looking to</p> <p>20 handcuff him and you've got someone from the rear with</p> <p>21 that hold on, it's counterproductive to handcuff him,</p> <p>22 because now I'm holding that person. We ultimately want</p> <p>23 to put that person on their stomach to be able to</p> <p>24 handcuff them. We can't do that when someone has a hold</p> <p>25 on them, even if they're applying pressure or not.</p>
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<p>1 A. It's a form of assistance.</p> <p>2 Q. And it could be -- could it be a form of</p> <p>3 intervention to get someone to stop the force they were</p> <p>4 using?</p> <p>5 A. Yes.</p> <p>6 Q. Now, do you -- is it your opinion that when</p> <p>7 officers Flores and Tran arrived, at what point is it</p> <p>8 your opinion that it would be obvious to a reasonable</p> <p>9 officer that Officer Lopera was using excessive,</p> <p>10 unconstitutional force?</p> <p>11 A. Well, when Tran arrived, he stated that -- that</p> <p>12 the suspect appeared to be out, unconscious, and that was</p> <p>13 at L -- LVMPD 1722. Tran also stated, when he arrived,</p> <p>14 "The suspect was not moving at any point and there was no</p> <p>15 resistance from the subject at any point once he</p> <p>16 arrived." And that's confidential 337.</p> <p>17 Q. Okay. So -- and Officer Flores testified that</p> <p>18 he believed that Mr. Farmer was still resisting when they</p> <p>19 arrived. Do you remember seeing that?</p> <p>20 A. I don't recall that testimony.</p> <p>21 Q. Okay. Well, let's stick, then, with Officer</p> <p>22 Tran. Okay. So Officer Tran arrives. He says it's his</p> <p>23 perception that Mr. Farmer may be unconscious already.</p> <p>24 So an officer at that point, their first task would be to</p> <p>25 get Mr. Farmer into handcuffs.</p>	<p>1 Q. And these officers -- sorry, Tran, Flores, and</p> <p>2 Crumrine were telling Officer Lopera to roll him on his</p> <p>3 side so they could facilitate handcuffing; is that</p> <p>4 correct?</p> <p>5 A. I believe so, yes.</p> <p>6 Q. So they were giving Officer Lopera instructions</p> <p>7 to facilitate the handcuffing?</p> <p>8 A. I believe so, but the issue with the</p> <p>9 intervention is he's not letting go of the hold. It's</p> <p>10 counterproductive to what they're trying to do. He's not</p> <p>11 doing that, and they have to take some type of action</p> <p>12 to -- to get him out of that hold so they can do what</p> <p>13 they're -- the intended thing to do is put him in</p> <p>14 handcuffs.</p> <p>15 Q. Okay. And we agree that the most important</p> <p>16 thing is getting Mr. Brown into handcuffs.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now, according to your review of the</p> <p>19 record, did you ever see where Officer Tran gave any</p> <p>20 orders or instruction to Officer Lopera regarding the</p> <p>21 hold?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall in Officer Tran's deposition and</p> <p>24 in some of the police department reports that once</p> <p>25 handcuffing was complete, once it was completed, Officer</p>

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<p>1 Tran said, "Loosen up"?</p> <p>2 Do you recall seeing that?</p> <p>3 A. I believe so, yes.</p> <p>4 Q. Okay. And I believe the testimony was that</p> <p>5 within a couple of seconds of handcuffing being complete,</p> <p>6 at that point Officer Lopera removed his arms from the</p> <p>7 neck area.</p> <p>8 A. Right.</p> <p>9 Q. Okay. And you would agree as you've already</p> <p>10 testified, when Mr. McNutt was testifying you, that the</p> <p>11 policy of the Las Vegas Metropolitan Police Department is</p> <p>12 that you maintain some form of hold until handcuffing is</p> <p>13 complete; correct?</p> <p>14 A. I don't recall if it's a policy.</p> <p>15 Q. Or training.</p> <p>16 A. A training directive.</p> <p>17 Q. And so once the handcuffing was complete,</p> <p>18 Officer Tran followed policy by telling Officer Lopera to</p> <p>19 loosen up, signifying to him that handcuffing was</p> <p>20 complete; is that fair?</p> <p>21 A. It is, but we've harkened back to when he</p> <p>22 arrived, for the 46 seconds that when we arrived before</p> <p>23 it was released -- is that he stated that he offered no</p> <p>24 form of resistance. He appeared to be unconscious. And</p> <p>25 then you wait until after; now he's -- for another 46</p>	<p>1 way of knowing that it would still take 45 seconds to get</p> <p>2 him handcuffed?</p> <p>3 A. Then that's a great point, and that's the reason</p> <p>4 why you have him release the hold. Because release --</p> <p>5 keeping the hold on while you're trying to effect the</p> <p>6 handcuffing technique's just prolonging it. He's</p> <p>7 unconscious apparently, according to Tran. He's not</p> <p>8 offering any form of resistance.</p> <p>9 Just roll him on his stomach and handcuff him</p> <p>10 and then -- let Lopera immediately know to let go and to</p> <p>11 roll him on his stomach and handcuff him so he doesn't</p> <p>12 keep it on for that additional 46 seconds while they're</p> <p>13 there.</p> <p>14 Q. Okay. And so when Officer Tran arrives, he</p> <p>15 hears Sergeant Crumrine say, "Let him go, Ken," and as</p> <p>16 we've already stated, the officers are entitled to</p> <p>17 believe that Officer Lopera will follow that command, and</p> <p>18 so then their next focus should be to get Mr. Farmer into</p> <p>19 handcuffs.</p> <p>20 A. Well, if he's not following the command, as he</p> <p>21 wasn't, that they heard from Sergeant Crumrine, is for</p> <p>22 them to take action around that failure to follow the</p> <p>23 command.</p> <p>24 Q. Okay. So let me back up to another question,</p> <p>25 because how would they know that Officer Lopera did not</p>
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<p>1 seconds and then tell him to loosen it up when the</p> <p>2 "loosen up" comment should have happened right when he</p> <p>3 had made the observation that he had him in a neck</p> <p>4 restraint and he appeared to be unconscious and was</p> <p>5 offering no form of resistance.</p> <p>6 Q. And do you recall whether Officer Tran testified</p> <p>7 that he heard Sergeant Crumrine say, "Let him go, Ken"?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And so as far as Officer Tran knew, that</p> <p>10 order had been given?</p> <p>11 A. Order has been given, but that doesn't negate</p> <p>12 the officer's responsibility to take some kind of action</p> <p>13 in the event that the order is not followed through with.</p> <p>14 Q. And so the action the officers were supposed to</p> <p>15 be taking was to get handcuffs on Mr. -- Mr. Brown.</p> <p>16 A. Yes.</p> <p>17 Q. And these officers did that. That was their</p> <p>18 focus.</p> <p>19 A. Go back to the action they were supposed -- I</p> <p>20 believe they were supposed to do is ensure that the hold</p> <p>21 was taken off of Mr. Farmer and ultimately have him</p> <p>22 handcuffed.</p> <p>23 Q. Okay. But now, when the officers arrived -- and</p> <p>24 so if Officer Tran arrives and sees what -- what he</p> <p>25 believes may be an unconscious suspect, would he have any</p>	<p>1 follow that command? So again, I asked you this</p> <p>2 question, and you kind of answered a different question.</p> <p>3 Was Officer Lopera required to throw his arms to</p> <p>4 the side and release any contact with Mr. Farmer?</p> <p>5 A. I don't know if he's required to do so, but I</p> <p>6 think that the prudent thing to do if you're trying to</p> <p>7 handcuff someone is to let go of the person who has them</p> <p>8 in their restraint, holding him, so you can put him on</p> <p>9 his stomach and then handcuff him.</p> <p>10 Q. Okay. And so it's your position that Officer</p> <p>11 Lopera should have ceased any contact with Mr. Farmer?</p> <p>12 A. Just roll him over and handcuff him. When you</p> <p>13 say "cease contact," when you -- let go, roll him over,</p> <p>14 let go -- let -- you have three other officers. Lopera's</p> <p>15 already been in this for long enough. Relieve Lopera in</p> <p>16 the sense so at least he can assist, but roll him onto</p> <p>17 his stomach -- especially when you say that when you</p> <p>18 arrive he is unconscious and offering no form of</p> <p>19 resistance, just roll him on his stomach and put him in</p> <p>20 handcuffs. It's just that simple.</p> <p>21 Q. And that's what the officers were saying. They</p> <p>22 were telling Officer Lopera to roll him to his side.</p> <p>23 A. The point is it took 46 seconds from someone who</p> <p>24 was not struggling with you to roll them on their stomach</p> <p>25 which should take one or two seconds to put them in</p>

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<p>1 handcuffs.</p> <p>2 Q. But you would agree that the moment handcuffing</p> <p>3 was complete, Officer Tran gave the order to Officer</p> <p>4 Lopera to loosen up?</p> <p>5 A. I agree with that.</p> <p>6 Q. Okay. And at that point, do you agree -- at</p> <p>7 that point Officer Lopera released any contact with the</p> <p>8 neck area of Mr. Brown?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 MR. ANDERSON: That's all I have.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 MR. SAYRE: I have a couple of questions.</p> <p>14 EXAMINATION BY</p> <p>15 MR. SAYRE:</p> <p>16 Q. After Sergeant Crumrine gave the order to, "Let</p> <p>17 go, Ken," did he have a duty to make sure that the</p> <p>18 pressure was released on the neck?</p> <p>19 A. Yes.</p> <p>20 Q. And failing to do so would be -- he would be</p> <p>21 participating in the unreasonable, excessive force?</p> <p>22 A. Yes.</p> <p>23 Q. Now, I'm going to represent to you that Officer</p> <p>24 Flores testified in his deposition that at the time he</p> <p>25 and Tran came up, that Mr. -- Mr. Farmer was out, as he</p>	<p>1 A. Yes.</p> <p>2 Q. And failing to do so would mean that they -- if</p> <p>3 they failed to do that, they would be participating in</p> <p>4 the excessive force regarding Mr. Farmer.</p> <p>5 A. Yes.</p> <p>6 MR. SAYRE: I have nothing further.</p> <p>7 FURTHER EXAMINATION BY</p> <p>8 MR. ANDERSON:</p> <p>9 Q. Let me just follow up on that a little bit. So</p> <p>10 we went through the training and we went through the --</p> <p>11 the three things that you consider to be intervention.</p> <p>12 What legal authority would have told Sergeant</p> <p>13 Crumrine that, once he gave the order to "Let him go,</p> <p>14 Ken," that he then had a further duty before handcuffing</p> <p>15 was complete to check to make sure that order was</p> <p>16 followed?</p> <p>17 A. I don't know what legal authority.</p> <p>18 Q. Okay. Are you aware of any Ninth Circuit case</p> <p>19 law or Supreme Court case law that says that an officer</p> <p>20 has a constitutional duty to physically intervene after</p> <p>21 giving an order to stop?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 MR. ANDERSON: Thank you.</p> <p>25 MR. SAYRE: No questions.</p>
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<p>1 put it.</p> <p>2 Now, once a subject is out from a restraint,</p> <p>3 neck restraint hold, is there any justification to</p> <p>4 continue to apply a restraint pressure on the neck?</p> <p>5 A. No.</p> <p>6 Q. In fact, is it dangerous to do so?</p> <p>7 A. Yes.</p> <p>8 Q. Now, did Flores have a duty, irrespective of</p> <p>9 Sergeant Crumrine, to make sure that that hold was</p> <p>10 released when he came up and saw that Farmer was</p> <p>11 unconscious?</p> <p>12 A. Yes.</p> <p>13 Q. And failing to do so, he would be participating</p> <p>14 in the excessive force of Officer Lopera?</p> <p>15 A. Yes.</p> <p>16 Q. Officer Tran testified that Mr. Farmer was</p> <p>17 making no resistance movements when he came up. Is one</p> <p>18 of the purposes of a neck restraint, whether it be a</p> <p>19 lateral vascular neck restraint or a rear naked choke, to</p> <p>20 reach the point where the subject is not making any</p> <p>21 resistance movement?</p> <p>22 A. Yes.</p> <p>23 Q. And at that point, is it necessary to ensure</p> <p>24 that a hold is released so no additional pressure is</p> <p>25 being placed on the neck?</p>	<p>1 THE VIDEOGRAPHER: This concludes the videotaped</p> <p>2 deposition of Scott DeFoe on August 21st, 2018. The</p> <p>3 original media from today's testimony will remain in the</p> <p>4 custody of Las Vegas Legal Video. The time is 3:16 p.m.</p> <p>5 We are going off the record.</p> <p>6 THE REPORTER: Electronic?</p> <p>7 MR. SAYRE: I do want a copy.</p> <p>8 MR. McNUTT: PDF.</p> <p>9 MR. ANDERSON: Regular and a mini.</p> <p>10</p> <p>11 -oOo-</p> <p>12 (Whereupon, the deposition of SCOTT A.</p> <p>13 DEFOE was concluded at 3:16 p.m.)</p> <p>14</p> <p>15</p> <p>16 SCOTT A. DEFOE</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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CERTIFICATE OF DEPONENT

PAGE LINE CHANGE REASON

* * * * *

I, SCOTT A. DEFOE, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

SCOTT A. DEFOE
Deponent

Subscribed and sworn to before me the
day of 2018.

Notary Public

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REPORTER'S CERTIFICATE

STATE OF NEVADA)

COUNTY OF CLARK)

I, Lori-Ann Landers, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify:

That I reported the taking of the deposition
of the witness, SCOTT A. DEFOE, at the time and place
aforesaid;

That prior to being examined, the witness
was by me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

That I thereafter transcribed my shorthand
notes into typewriting and that the typewritten
transcript of said deposition is a complete, true and
accurate transcription of my said shorthand notes taken
down at said time to the best of my ability.

I further certify that I am not a relative
or employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney or
counsel involved in said action, nor a person financially
interested in the action; and that transcript review NRC
30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this 21st
day of August 2018.

LORI-ANN LANDERS, CCR 792, RPR